THE COUNCILLOR

A. N. C. SHELLEY

DISCUSSION BOOKS No. 24

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General Editors :

Richard Wilson, D.Litt., and A. J. J. Ratcliff, M.A.

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NOTE TO POST-WAR REPRINT

In this reprint, which became necessary during a period of transition after the War, no attempt has been made to revise the text completely. Readers should, therefore, bear in mind that some changes are occurring beneath their eyes : for example, the passing of the third amending Act of Parliament since 1943 dealing with town and country planning ; and the enormous extension of the health and education services and of nationalized industry, including undertakings which have hitherto belonged to local authorities. It is as yet impossible to say what further alterations in the structure of local government will be made in this period of reconstruction. Notes have, however, been inserted, linking the pre-war text with these post-war developments.

A. N. C. S.

London, April 1947

THE COUNCILLOR

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PART I

ORGANIZATION OF LOCAL GOVERNMENT

INTRODUCTION

THE purpose of this book is to present an accurate account, as complete as brevity allows, of English local government as it is to-day. There are numerous books upon the subject, ranging downward in size and price from Lord Macmillan's *Local Government Law and Administration*, an encyclopædia in twenty-three volumes, and from the five volumes of Lumley's *Public Health*, which is in reality a complete account on the legal side of every aspect of local government.[1] Besides these, there are many smaller and more manageable books,[2] but, so far as the author and publishers are aware, all the text-books are written rather from the point of view of the professional or other skilled administrator than from that of the audience to which this book is addressed. The complicated nature of modern government requires that most of the detailed work shall be performed by paid officials, possessing professional qualifications and experience. At the same time, an essential feature of the

[1] Both published by Butterworth and Co., Ltd., Bell Yard, London, W.C.2.

[2] For other books see page 187.

English system is that these officials are appointed by and responsible to unpaid authorities, the members of which are themselves elected upon virtually adult suffrage.

The member of a local authority cannot be expected, and still less can the elector be expected, to make himself familiar with the intricacies of the governmental system. It is, however, desirable that electors and elected shall be acquainted in outline with what the authorities and their officials have to do. It is to these persons, of whom few have the time and fewer the inclination to master major works upon the subject, that this book is intended to make its first appeal. It is hoped also that it may be used in the higher forms of schools, in discussion circles, clubs, and other places where students of whatever type wish to inform themselves on the working of institutions which—taking it by and large—have more influence than any others on the daily life of the community.

It has been well said that in the last resort all government is local. Artaxerxes, King of Kings, Imperial Cæsar (before he died and turned to clay), Cardinal Richelieu, for almost a generation master of the French king and kingdom, and the Imperial Parliament of Britain, all depend on local administration of whatever edicts they enact. The central government, whether in the form of absolutism or what is called democracy, may issue its decrees but it cannot directly secure their observance at a distance from the seat of government. Paul might appeal to Cæsar, and to Cæsar he might go, but, however feasible this was for a wandering preacher, the farmer, trader, or fisherman with a home, a business, and his local ties must have justice and government brought to his door. Local courts are needed ; just so

the satrap or proconsul, the Cromwellian Major-General, and the modern inspector of taxes or city engineer, were and are necessary in their respective spheres and generations, to ensure that laws which have been centrally framed are carried out. It is sometimes said that in contrast with England this or that country has no local government, but essentially this cannot be true. What the remark means is that the special English system has not elsewhere been developed.

This English system, like all else in English public life, cannot be fully understood without delving into history, but in a small book like the present the historical method would be out of place, and an effort will be made to describe the system as it is, with such references only to history as are unavoidable.

The mode of laying out the book after a general conspectus will be to indicate the different kinds of local authority and their relations to each other, and, later, the principal tasks they undertake. In this later portion of the book no attempt will be made—it would be impossible within a reasonable compass—to set out fully for guidance of the councillor or student how the machinery (in detail) works ; how planning schemes are made under the Town and Country Planning Act, or how they operate ; how sewerage and water supply are carried out ; how education is administered by a network of local authorities and their committees ; or any of the other matters proper to be dealt with in specialized works. It must suffice to indicate that this or that local authority is concerned with certain services, and then in the briefest outline what those services are.

CHAPTER I

AREAS AND AUTHORITIES FOR LOCAL GOVERNMENT

ENGLAND and Wales are divided for purposes of local government into administrative counties. Within each county there are smaller administrative areas called boroughs, urban districts, and rural districts. Some boroughs, known as county boroughs, are for governmental purposes not in an administrative county; their local authorities have some of the powers of the governing authority of a county, and the county council has no jurisdiction in these boroughs. Boroughs other than county boroughs are within administrative counties, and for most purposes are subject to the jurisdiction of the county council equally with urban districts.

Rural districts are further subdivided into parishes. In boroughs and urban districts, also, parishes were formerly the units for certain purposes of government, but they are so no longer. In a rural district the parish retains a real significance.

Historically the parish is the oldest surviving governmental unit in this country. The "hundred," which dates from Anglo-Saxon times, is now nothing but a name, though the poor law unions, to be subsequently mentioned, often consisted of the parishes within a hundred. The parish originated as the area served by a church and parson; it commonly coincided with the

manor—a village community with a life and system of its own which after the Norman Conquest became the governmental unit. The powers of the lord of the manor showed a tendency to remain static as the feudal system declined ; manors were property, and the lord was frequently an absentee. His tenants and former serfs came to think of themselves rather as inhabitants of the parish than as dependents on the manor, and it was natural that the parish should become the unit for nearly all purposes of local government, especially in the civilized portions of the country where parishes were of reasonable size. This coincidence of civil and ecclesiastical areas was not universal. In remote and unsettled regions like the northern counties the ecclesiastical parish was too large, and for purposes of civil government it was often divided into " townships." Thus the word parish came in Acts of Parliament to mean an area which could carry its own burdens of local government, particularly of the relief of the poor, and gradually the civil or governmental parish became separated in the eye of the law from the ecclesiastical parish even where they happened to have the same boundaries, as they often have to-day. The importance of the civil parish as a unit of government has been steadily diminishing with the growth of population, the improvement of communications between one place and another, and the realization by the public that small areas were not efficient for purposes of local government and public health. Under legislation passed between the wars the civil parish, as is said above, has ceased in boroughs and urban districts to be a unit for any purpose of local government, and even in rural districts, especially since 1929, the tendency has been for things to be managed, much

more than theretofore, on a basis of the rural district and the county.

Readers of old novels, as well as those familiar with English legal history, will probably remember the importance of the parish in the eighteenth century. From mediæval times until 1832 the inhabitants of every parish were responsible for relieving their own poor, and although parishes were grouped in unions in most places in the nineteenth century, the parish remained the fundamental poor law unit. It was also the unit for collection of local rates (a subject on which a separate chapter will be found later in the book) until 1925. In Stanley Weyman's romance *Sophia* you will find a picture true to eighteenth-century life, of the inhabitants of a parish turning out with whips and pitchforks to drive beyond their boundary persons suspected of being infected with the smallpox. It was only by degrees that men came to realize that smallpox did not respect the parish boundaries, until eventually the parish boundaries almost disappeared for other purposes.

The transfer of functions to authorities elected for more widespread areas, and the increase of population, have given a new meaning to the phrase "local government," and divorced it—except in popular or controversial usage—from "democracy" as that expression was originally understood. Some observations on this will be found in the concluding chapter. We shall speak later of the union of parishes, which became a hundred years ago the standard area for poor relief, and was used also for purposes of public health until the Local Government Act, 1894. Side by side with this there came improvement commissioners, set up by local Acts of Parliament in many of the populous areas,

in the first half of the nineteenth century, and local boards of health, under the Public Health Act, 1848, which could be established anywhere if cause was shown. All these bodies were transformed, so far as urban districts were concerned, into urban district councils by the Public Health Act, 1875. We proceed to speak of the present areas of local government.

Each of these areas is under the control of an elected council, and the councils are compendiously spoken of for most purposes as local authorities. They are all elected for three years ; in boroughs, and sometimes in urban districts, one-third of the councillors go out of office annually, but elsewhere there is a triennial election of the whole. Men and women equally are eligible, and the electorate comprises (practically) all adults of both sexes.

The phrase local authority has in Acts of Parliament come more or less to mean one or other of five types of elected authority to the exclusion of other classes of "authority" (such as managers of employment exchanges or inspectors of taxes) who carry on the work of government locally on behalf of the central authority in London. As will be seen on referring to what is said at the beginning of this chapter, these five types of elected authority are the councils of counties, boroughs, urban districts, rural districts, and parishes. Of these five the last mentioned, that is the parish council, carries out its functions over an area which is comprised within a rural district, while the rural district itself is in a county so that the county council also has jurisdiction. From the point of view of the elector, this means that in a rural parish he has a vote for three different classes of local authority.

In a borough other than a county borough or in an urban district—since the council of the borough (more usually called the town council) and the urban district council respectively act for an area in which the county council also acts for certain purposes—the elector has votes for the members of two local authorities of different status. There are no areas subject to the jurisdiction of county councils alone, that is to say without having also a town council, an urban district council, or a rural district council (and within rural districts also parish councils) dealing with some matters.

To complete this picture of the five types of English local authority outside London it must be stated that in parishes of the smallest population, less than three hundred at the last census for the time being, there is no parish council unless one has been specially established by order of the county council. In these smaller parishes the matters of local government which are generally controlled by a parish council are in the hands of a body called the parish meeting, which is an assembly of all the local government electors.

It must be also mentioned for completeness that if a parish has a parish council the parish meeting has some functions also, but its functions are confined, almost wholly, to electing the parish councillors, to giving assent in some few cases to the raising of money by the parish council, and to any general discussions of parochial affairs which the parish meeting thinks worth while. In practice the parish meeting, although it is the only governing body which consists of the whole body of the electorate, is of diminishing importance—by reason of the increasing complications of modern life even in a rural parish.

Before passing from county councils and town councils, we must speak of an anomalous class of local authority, a very important class mentioned at the beginning of this chapter, which is called the council of a county borough. Such a council acts for a borough which in size and importance is sufficient to support the burdens which elsewhere fall on the county council, and such a council therefore is outside the jurisdiction of the county council of the geographical county in which it is situated. The county borough is a separate administrative area. There are one or two other matters which should be mentioned also, because they may be puzzling to students who read in textbooks or in the periodicals devoted to local government about the activities of certain other bodies. Some boroughs have the rank of city. A county borough is not necessarily a city, nor is there any reason why a non-county borough should not have that rank. The rank of city is independent (in history and in theory) of population, wealth, or other indication of importance as estimated in the modern world. The city is created by the King much as he creates a peer : the name or style is, so to speak, a title of honour conferred upon a town. The period at which certain towns achieved this status is lost in antiquity. These are mostly old cathedral towns, and it is not known for certain in all cases whether the status was conferred by mediæval kings or whether it was assumed with their acquiescence. In modern times the King, who acts on the advice of the Home Secretary, does not confer the title except on towns of outstanding population and importance, most if not all of which have already achieved county borough status. The council of a city is usually by courtesy termed the City Council,

instead of town council or borough council, but its legal powers are the same as those of a county borough council or non-county borough council, as the case may be. The King may also confer the title of "royal" upon a borough without making it a city. There are 3 "royal boroughs," Windsor, Kensington and Kingston-on-Thames; 2, though not "royal boroughs," are entitled to use the word royal as part of their name—viz. Royal Leamington Spa and Royal Tunbridge Wells. The name of Bognor was also changed to Bognor Regis by grant from King George V. after his convalescence in the neighbourhood. This is the only instance in modern times in which the "royal" style has been granted in this form, the others, such as Rowley Regis, being survivals of the former status of the manor as part of the King's estates.

Another governmental organ which will often be found mentioned in books and periodicals is the vestry. The vestry was originally an assembly of the householders of a parish, meeting for local government, both civil and ecclesiastical. It was much the same as the modern parish meeting, which we have already mentioned, except that it existed in every parish, urban or rural. Up to the early nineteenth century it was in most places the only popular assembly for governmental purposes. After the Municipal Corporations Act, 1835, its importance declined, and in rural areas it lost its powers by the Local Government Act, 1894, when parish meetings were created. In urban areas, including boroughs, it lingered as the ghost of its old self till 1929, when it disappeared as an organ of the civil government, that is to say for affairs other than those of the Church.

Another local governing body which also disappeared

in 1929 was the board of guardians. This was used for administering the poor law, or, as it is now called, public assistance. The relief of the poor had from the time of Queen Elizabeth been the duty of the parochial local authorities (to be next mentioned), but in the early nineteenth century several causes, namely, the growth of population, the growth of industry, and disturbance of the economic balance of the countryside due to the first two causes, and also to the Napoleonic wars, led Parliament to set up in many parishes a new organization for this purpose called a board of guardians, and from 1834 onwards, under the Poor Law Amendment Act of that year, the tendency was to form parishes into unions under boards of guardians for the relief of the poor. It will still be found that old-fashioned people speak of the "union" when they mean what to-day is called a public assistance institution, and in the nineteenth century was called the workhouse. The relief of the poor is now among the functions vested in the councils of counties and county boroughs, and will be dealt with as such in its place. We have spoken of the old parochial authorities before the modern parish council and parish meeting were invented. In addition to the vestry there were persons called the overseers; their full title "overseers of the poor" more or less expresses their early function. It was found necessary after the dissolution of the monasteries to provide for the poor in each parish by compelling householders and others to contribute, and one of the earliest functions of the overseers was to enforce such contributions. Since the contributions were raised proportionally or rateably according to the ability of the contributor to pay, they came to be known as "rates," and when boards of guardians came

into existence everywhere in the nineteenth century to attend to the relief of the poor, this rating came to be almost the only function of the overseers. The rating machinery was recast by the Rating and Valuation Act, 1925, which abolished overseers; we shall return to this in the chapter on local government finance.

Although it is necessary, for reasons of space and clarity, to confine this book mainly to the local government of the ordinary area, it is necessary, for the avoidance of confusion, to recognize that London has a special form of government. The ancient City of London is governed by a council which, instead of being elected in the ordinary way, retains many remnants of its mediæval forms. For most purposes, however, this council exercises the same functions as any one of the councils of the twenty-eight metropolitan boroughs by which it is surrounded. As regards their constitution and the forms under which they work, these councils of metropolitan boroughs are indistinguishable (except by the expert) from the councils of boroughs outside London; but their functions are very different, and in fact much less in scope, because in a compact area like London, which has at the same time an enormous population, Parliament has thought it well to confer upon the London County Council not merely the powers of every other county council but a number of powers which outside London will be found exercisable by a borough council. London is thus in many ways anomalous. For a detailed account of the differences on any particular topic the reader cannot do better than turn to the *Encyclopædia of Local Government*, edited by Lord Macmillan.[1]

To return to the five different classes of council with

[1] Published by Butterworth & Co., Ltd., Bell Yard, London, W.C.2.

which this chapter started : since there is a good deal of misunderstanding about their forms and titles, a word on these will not be out of place. The council of a borough, be it a county borough or non-county borough, consists of the mayor (or lord mayor), aldermen, and councillors. The title " lord mayor," like the status of a " city," can be conferred solely by the King (although it is believed that in mediæval times the mayors of London began to call themselves lord mayors without express authority, and have continued to do so ever since). A small point which will interest some readers may be mentioned in passing. There is or was at one time a popular idea that every lord mayor is entitled to be called " right honourable " during his year of office. This style cannot however properly be used except by the King's authority, and in England and Wales this authority has been given only to the lord mayors of London and York. In Scotland the lord provost of Edinburgh and the lord provost of Glasgow are entitled to be styled right honourable, and the same is true of the lord mayors of Dublin, Belfast, and some of the Dominion capitals. Strictly speaking, a mayor should be addressed as " the worshipful the mayor of," although in some towns the style " right worshipful " has been adopted by local custom and is harmless. A style sometimes used, " his worship the mayor," is not correct.

Aldermen may be described as a superior breed of councillor in boroughs and in counties. They are not elected by the local government electors, but are chosen by the councils, and their term of office is six years.

Apart from boroughs the other four types of council have this in common that their chief personage is called a chairman. To speak of the chairman of a county

council, or of the urban district council of an important district, argues some poverty of imagination on the part of Parliament, and ingenious minds have been for years at work to find some other term, so that the chairman of such a body may be distinguished (as is the mayor of a borough) by a style differing from that of chairman, for example, of a company or meeting. So far no name has been found which has caught the general fancy. The chairman of a county council is not, in virtue of his office, entitled to be called " right honourable," except in the case of the London County Council, where the style was given by King George V. a short time before his death.

County councils, like the councils of boroughs, have aldermen elected for six years, but there are no aldermen forming part of the councils of urban districts, rural districts, or parishes.

We have spoken about mayors or lord mayors, and about chairmen, about aldermen, and councillors. It will be seen that except in boroughs and counties all members of the local authority are elected, and have among themselves equal status. They all have the same title, councillor, whether elected to a county council spending millions and supervising many other authorities, or to a parish council whose budget is of a few pounds a year. Neither in the one case nor the other is any qualification required for election beyond that of being registered as an elector, or possessing a residence or property in the area. Suggestions are made from time to time that candidates ought to possess some degree of education, if not of special knowledge of their duties, but no such suggestion is likely to be accepted. If the electors choose an incompetent or uneducated person to

govern them, that is their own affair. At the end of the book we shall have more to say about the absence in this country of any officer, such as exists almost everywhere upon the Continent, to act as a link between the central and the local governments. Here it will be enough to point out that no such officer exists in the English system. The tendency, indeed, for many years has been to weaken the control of Government over local governing authorities, and when it is thought the latter should be supervised, to put the supervision of one elected body into the hands of another—*i.e.* of local authorities within the county into the hands of the county council, which is elected by and therefore in theory responsible to the same persons, though over a wider area.

To round off the picture of the personalities engaged in local government we may in conclusion mention the lord-lieutenant and the sheriff. In connection with local government, the lord-lieutenant of a county, who in the Middle Ages was really the representative of the central government, has now no more than formal duties to perform. He is the King's representative, and as such has precedence over all persons and in all places in the county. A curious and interesting sidelight on the British constitution is provided by the lord-lieutenant's standing in a borough. The Local Government Act, 1933, re-enacting a provision which was to be found in the Municipal Corporations Acts, 1835 and 1882 (which itself merely stated the previous custom), declares that in all places in a borough the mayor shall have precedence. It is, however, a rule of English law that the King's prerogative is not affected by an Act of Parliament unless this is expressly stated or necessarily

implied, and accordingly the provision mentioned, in favour of the mayor, does not deprive the lord-lieutenant of precedence even in a borough within the county for which the lord-lieutenant has been appointed by the King.

Another county officer appointed on the King's behalf is the sheriff. His actual appointment, except for Lancashire and Cornwall, is made with picturesque ceremonial, by the pricking with a bodkin of names upon a card, by the Chancellor of the Exchequer, because the original duties of the office were connected with the revenue. The sheriff's duties at the present day are chiefly concerned with the administration of justice, and they do not directly concern local government authorities. As well as county sheriffs, some boroughs have, by custom or by charter from the King, a sheriff appointed by the council. Similarly at the present day coroners for counties and boroughs are appointed by the councils, but when appointed they are independent, and are the King's officers and not the local authority's officials.

A word upon another matter where misunderstanding is continually found. In a borough it is common to speak of the council, that is the mayor, aldermen, and councillors, as the corporation, but this (except in metropolitan boroughs where by Act of Parliament it is correct) is a vulgar error. Actually the council of a county, or urban district council, can be called the corporation, but there this term is never used. For those who are not acquainted with the peculiar theory worked out in English law about "incorporation," it should be mentioned that a corporation or corporate body is a collection of persons who in their collective

capacity have been given the right and power of acting as if they were an individual. It may be by way of trade ; it may be by way of government, or any other activity. In early days corporations could be created by the King alone. There were sound historical reasons for this in the Middle Ages ; the chief reason was in the law of mortmain—that is to say, the desire of the King not to lose what we should to-day call " death duties," as would have happened if property had been transferred to bodies with perpetual succession.

A municipal corporation is still created by the King—the procedure is that the Privy Council settles a " scheme " for its establishment and the King then grants a charter, which is the actual incorporating instrument. In modern times most corporations have come into existence under Act of Parliament. This is how county councils, urban district councils, and rural district councils came into existence, but the most familiar instance of a corporation is an ordinary trading company. This means that the whole body of its members considered in the aggregate may hold property, carry on business, and do other things such as an individual might do. Obviously they have to do so through their representatives, who in the case of a company are called the directors. Just so, in a municipal corporation (that is a borough, in which all the burgesses, the same thing as local government electors, are incorporated) it is this body which constitutes the corporation, and the council is the organ—parallel to the body of directors—through which the corporation acts. The council of a borough are not the corporation, any more than directors are the company.

A county council, an urban district council, and a

rural district council (and, indeed, a parish council) are themselves corporations, and the local government electors or inhabitants of these areas are not members of the body corporate.

Just as counties on the one hand and boroughs or other smaller areas on the other differ widely in extent, population, and resources, so also within each of the five classes of local authority which have been mentioned there are almost startling differences in numbers.

Populations of boroughs range from Birmingham with over a million to Canterbury, a county borough though its population at the last census was under 25,000, Fowey and Hedon, with populations under 2,000 and just over 1,700. These are taken at random from a published list. The latest information gives the rateable values of these places as over £7,500,000, nearly £220,000, £17,000, and under £7,300 respectively.

Willesden, which only became a borough in 1936, had as an urban district a population approaching 200,000 and a rateable value approaching £2,000,000.

In speaking of the manner in which local authorities are elected, it has been necessary more than once to refer to the electors or electorate collectively, as the main body of the public to whom local authorities are responsible. At the present day, in consequence of successive extensions of the franchise, it may be said that practically all adult persons of both sexes have a right to vote in local government elections. A list of local government electors is compiled in counties and boroughs by the respective clerks of the county council and town clerks at the same time as the register of parliamentary electors. The qualification for being placed upon this list is technical, and need not be set out

for the purpose of this book, nor is it necessary to do more than mention the fact that the register of electors is also the basis of the jury list, the list, that is, of persons who can be compelled to serve on juries unless they fall within one or other of certain exemptions laid down by Act of Parliament.

Before passing to the more ordinary functions of local governing authorities, this may be a convenient place to speak of the control of the police. In London, and throughout a substantial area surrounding London, the police have no connection with local authorities, but are controlled directly by the central government through the Home Secretary. The Commissioner of Police of the Metropolis is appointed by the King, on the Home Secretary's recommendation, and the expenses of the metropolitan police are derived from a fund separate from local revenues, to which, however, local governing authorities within the metropolitan police district have to contribute, the remainder of the fund beyond their contributions being met by the Government.

In the City of London, which is excluded from the jurisdiction of the metropolitan police, the Commissioner is appointed by the City Corporation, who are (for that small area) the police authority.

In counties and boroughs outside the metropolitan police district the position of the police is on the borderline of local government. They are not the King's officers or servants, but they hold office under him, as was held by the High Court in 1938. They owe a duty to the King to perform their functions properly, but are not under the control of the central government. In a county they are not under the control either of the county council. In a borough there is a greater degree

of control by the council of the borough if the borough has a police force of its own, but there is a steady tendency in modern times to merge boroughs in the administrative counties for police purposes, since small police forces cannot be as efficient as a county force.[1] In a borough which has its own police force the council is bound to appoint a committee called the watch committee, which is the police authority. (Where there is no police force there is still a watch committee, but its functions are rather different.) As regards borough police, the appointment of the chief officer (who may be called a superintendent or a chief constable, the latter title being most common in the larger forces where he has superintendents under him) is in the hands of the watch committee, which may dismiss him and any constable. In the counties the chief constable is appointed by a committee called the "standing joint committee" of the county council and the county magistrates. This standing joint committee is the same body which appoints the clerk of the peace, and it has to be consulted before a clerk of the county council is appointed, in order that it may be ascertained whether the person so appointed will be acceptable as clerk of the peace.[2] In a county, members of the police force below the rank of chief constable are appointed by and may be dismissed by him, although the rates of pay are determined by the standing joint committee. The maintenance of the police is one of the local services (it can hardly be called a local government service, or at least not a local authority service) to which for many years a contribution has been made by the central government. In order to make sure that police forces

[1] See p. 33, note 1. [2] For the clerk of the peace, see page 37.

are efficient, the Home Secretary appoints inspectors of constabulary and may withhold the Government grant. Further, under the Acts of Parliament controlling the police there is a right of appeal to the Home Secretary if a watch committee in a borough or the chief constable of a county, as the case may be, proposes to dismiss any police officer of whatever rank. This right of appeal has been an important safeguard in certain cases (which readers may remember) where political considerations have openly come into play, or where a local authority has desired to influence the carrying out by the police of their duty to enforce the law, and in others where, more subtly, efforts have been made to prevent the police from investigating allegations of criminal offences on the part of councillors. With the absorption of smaller forces in larger, with the power to give or withhold the Government grant for efficiency, and with the right of appeal against dismissal, the Home Secretary has been obtaining a steadily increasing influence over the police, both as regards pay and equipment and in the direction of uniformity in the administration of the law. It is, however, still one of the peculiarities of England among European countries that there is no national police force. The only force directly controlled by the central government is the metropolitan police, and this has no power to act outside its area except in some few places for which special provision has been made by Parliament.

Before passing from the outline of local government, that is, from our account of areas and of the governing bodies for those areas, we must notice combinations of areas and of local government authorities. We have seen that the general scheme is that the country is divided into counties, the county is divided into districts,

some of which have the title of boroughs, and of those districts some, namely rural districts, are divided for administrative purposes into parishes. It is however found that for many purposes the borough or the district is too small an area, while the county is too large. Or again, apart from questions of size, some combination of areas may be desirable for the performance of some special service, and it may even be desirable to form special areas cutting across the ordinary boundaries, taking a part from one area of local government and a part from another.

The smallest and simplest of the areas formed for special purposes occurs in a rural parish, where (for example) it is not found necessary to provide lighting in sparsely populated parts, and special provision is accordingly made for treating a village or villages as a separate lighting area. At the other end of the scale there are some purposes for which even counties, the largest normal administrative areas, may be combined—as for example the provision of mental hospitals, where the population of one county is not large (or mad) enough to provide, or to require, such provision for itself alone. There is no homogeneous plan about these combinations. They have been formed under different Acts of Parliament according to particular exigencies, and according to the preference (in the matter of combination) which prevailed in the minds of those responsible for framing legislation at a given time. The type of combination which is now most usual is a joint committee of two or more local governing authorities, and under the Local Government Act, 1933, it is possible to have such a joint committee for any two authorities irrespective of their size. There are two main

types of joint committee, namely those which exercise actual governing powers within the sphere allotted to them, those, that is to say, that make decisions which are binding on their constituent authorities and on members of the public, and those which are merely advisory or consultative.

The Town and Country Planning Act, 1932, provides a convenient instance of each type of committee. It is generally agreed that the smaller local governing areas are too small for successful planning, and there may even be overwhelming advantage in planning as a whole the development of the largest borough with that of the surrounding districts.

The Town and Country Planning Act allows planning authorities (which are the councils of all boroughs, urban districts, and rural districts) to relinquish their powers to the county council, or to entrust their powers to a joint committee established from among themselves, or to set up such a committee without giving it power to act independently. The choice between these courses rests with the authorities by whom the committee may be set up. There are statutes by which local authorities, if they act by way of a joint committee, are obliged to confer upon it executive powers, and others again where they cannot do so, but in general—in the absence of some special statutory restriction—the Local Government Act, 1933, allows either type of combination.

It will be manifest that there are whole areas which ought to be treated together for other purposes besides those of town and country planning; there has, for example, been much discussion of the problem of local government on Tyneside, and proposals have been mooted for some new form of composite authority.

To some extent this problem of the unduly small area of administration has been solved by the union of areas to form new areas of larger resources, or by the extension of the larger boroughs. The city of Birmingham (for instance) has within a generation more than doubled its population by the absorption of previously independent units. The city of Stoke-on-Trent as it now exists was formed in 1912 by combination of the "Five Towns" of the Potteries. Readers of Arnold Bennett's *Old Wives' Tale* will remember the local heart-burnings to which these processes gave rise.

We have been speaking so far in this chapter of the setting up of joint committees or other joint bodies for performing services which pass beyond the boundaries of a single district. There is another type of committee which has to be considered. This is the committee which, within a particular area of local government, carries out some services more or less as if it were an independent local authority. The two best-known committees of this type are the education committee and the public assistance committee. Each of these has taken the place of what was formerly an independent local authority, and retains marks of its origin. In a later chapter we shall indicate which local authorities are those carrying out the Education Acts, and shall give some account of the scope of those Acts.

In the present chapter it is desired merely to indicate that every local authority which is an education authority must have an education committee, formed in pursuance of the governing Acts of Parliament, and that that committee exercises within the territory of the appointing local authority all duties in regard to education except the raising of money.

Similarly, public assistance committees are the direct successors of the former boards of guardians, which have been already mentioned as having come to an end in 1929. When boards of guardians were abolished their functions were transferred to the councils of counties and county boroughs, and each of these authorities is obliged by the Local Government Act, 1929, read with the Poor Law Act, 1930, to set up a special committee to which is entrusted the duty of relief of the poor. When the Act of 1929 was going through Parliament there was much objection to the abolition of boards of guardians, particularly in rural areas, where it was said that the county council and the public assistance committee of the county council would be too remote from the lives and needs of those requiring assistance. It was therefore provided that every public assistance committee for a county must establish sub-committees to which there was attached (chiefly for sentimental reasons) the label of " guardians committees " in order that the old name might not be lost.

There are some other committees whose establishment is compulsory, such as county agricultural committees and committees for administering the Acts relating to mental deficiency.

Apart from compulsory committees every local authority has power to set up as many committees as it likes, and to delegate to them, with or without restrictions, any of its functions except those of raising rates and borrowing money (the function which has been mentioned as one which even the compulsorily established committees are not allowed to exercise). There was till recently an inconvenient divergence between the powers of different classes of local authority to appoint these

varied committees, but the whole thing was put on a uniform footing by the Local Government Act, 1933.

The committee system is perhaps the most characteristic feature of English local government. In practice, all but the smallest local authorities do the greater part of their work by delegation to committees. Although the extent to which they allow their committees an independent power of action varies widely, some requiring all acts of the committee to be submitted to the council for approval, and others allowing committees voluntarily appointed by them almost as full latitude as is given by statute to the education committee, nevertheless the general pattern is that all matters on which the council has to reach a decision are first considered by one of its committees. It is sometimes said that this leads to delay, since the committee first reaches or proposes a conclusion which then has to come before the council. On the other hand the result, if the council itself attempted to do the business, would be congestion, and probably failure to appreciate much of what was being done. The normal practice may be said to be that the committee makes a printed report to the council, in which it indicates what action it has taken in matters where the council has entrusted to it independent powers, and what action it recommends in those matters which the council has reserved for its own decision. These different conclusions of the committee may be distinguished in the print by differentiated type, or in some other manner indicating to the council as a whole points on which a decision is required. It is thus possible for the conscientious councillor, who peruses his agenda paper and the printed reports of the committees which accompany it, to form an opinion on the questions on

which he has to vote. Some system of this kind is unavoidable with our modern large units of local government, and probably the boroughs, counties, or districts in which business runs most smoothly are those where the greatest number of matters has been delegated to committees with power to act. The comparatively small committee can be got together at more frequent intervals than a large committee or the full number of members of the council.

On the other hand, the committee system, with delegated powers, undoubtedly means that there is a further gap between the exercise of power and the ultimate control by the electorate, that is, by the body of ratepayers who have to find the money. This again is one of the fundamental problems which has to be considered by those who wish to make the English local government system a success.

Note 1 (p. 26). By the Police Act, 1946, the councils of counties and county boroughs became the only police authorities from 1st April 1947.

CHAPTER II

OFFICIALS

At the primitive stage of any undertaking, whether it is that of a local authority or a business or profession, it is possible for those who have the final responsibility to do the work themselves. As soon as the business grows it is necessary to employ assistants. Local government is no exception. A small local authority like a parish council carrying out a narrow range of duties in a restricted area can do most of its work without the employment of paid help, except perhaps a clerk to keep its records. Indeed the Local Government Act, 1933, repeating a provision of the Local Government Act, 1894, by which parish councils were created, contemplates that the duties of clerk of such a council may be carried out by one of the members without remuneration, although the Act also gives power to appoint a paid clerk. It is possible in such cases for the clerk of the parish council to be a person engaged in some other occupation who receives for keeping the council's minutes, arranging meetings, and conducting its correspondence a nominal remuneration. As the local authority increases in size, as its duties multiply, and as the area which it controls extends from the parish to the county, it is unavoidable that paid staff shall be engaged. In a city like Manchester or Birmingham the office staff

alone numbers hundreds of persons, and the office organization is at least as complex as that of any commercial undertaking in the city. Many of the problems dealt with by the office staff are much the same as those to be dealt with in the business world. The collection of rates is not, for our present purpose, a very different problem from the collection of debts due to a commercial undertaking. The money has to be got in by collectors and accounted for at audit. Similarly there will be hundreds, and in some towns thousands, of letters addressed to the local authority on all sorts of subjects, which must be filed and answered. Some of those persons who criticize the increased cost of the staff of local authorities by comparison with that (say) of twenty-five years ago forget that the mere increase of population, apart from anything else, means greater correspondence, more complex records, and more office work. Such a task as that of slum clearance, or the abatement of overcrowding, or the opening of a municipal housing estate, means elaborate recording of the condition of thousands of small houses. All this has merely to be stated to become obvious.

What is of more importance to make clear is that the supervising of the diverse functions of the modern local authority calls for chief officials of full professional standing, and for responsible assistants in charge of the various branches of each department. Not only a city of the calibre of those already mentioned, but even a borough or urban district of quite moderate size, may at any given time be incurring expenditure running into many thousands of pounds for such purposes as the provision of new sewers, the erection of a school, the demolition of slums and provision of new houses for the

working classes, and in many cases for trading services such as the provision of water, gas, or electricity, or the management of a transport undertaking. (See p. 48, n. 1)

The officials who by Act of Parliament or by practical necessity have to be appointed in every local authority's area greater than a parish are the clerk of the council, the council's engineer or surveyor, a medical officer of health, and a treasurer or accountant. It is impossible to carry out the business of a modern local authority without at least these chief officials, and, according to the size of the local authority's district and the extent to which it undertakes other services, it will commonly be found that there are separate gas and water engineers, tramway managers, a director of education, and very probably a separate superintendent of public cleansing. If much housing or other building work is undertaken, there may be a permanent whole-time architect employed, and many of the larger local authorities have found it necessary to divide the business of their engineer, between highways and streets on the one hand and building work upon the other. There is no compulsory or uniform system for the appointment of these chief officials, nor is the work divided between them on any uniform plan in all localities.

Broadly, the nature of their duties will be gathered from their titles, except those of the clerk of the council. This official, who in a borough or city bears the title of town clerk, which has come down to us from mediæval times (it will be remembered that it is used in the story of Diana of the Ephesians in the Authorized Version of the Bible), was the first to be found necessary in the early municipal corporation. Side by side with him there came into existence the clerk of the peace for the

county. The clerk of the peace was in the first place concerned with the administration of justice : he was, that is to say, clerk to the county magistrates. In areas where there was no municipal corporation a great deal of county government was, until the Local Government Act, 1888, carried out by the county magistrates in addition to their judicial duties, and it was thus natural, when county councils were created by that Act, that the clerks of the peace who were then in office should have been declared by the Act to be, in virtue of their office, clerks of the newly created county councils. This position continued until recently. Because he was originally a judicial officer, the clerk of the peace could not be dismissed so long as he carried out his duties properly, and if the county magistrates desired to dismiss him there was some difficulty in proving to the satisfaction of the High Court that he had not done his duty. This had arisen because of the importance of ensuring that he would give honest and impartial service in judicial work : his position was made something like that of a judge. In consequence of differences of opinion which arose between the county council of West Sussex and their clerk in the years just before 1930, an Act of Parliament was passed in 1931 which altered the position of clerks of the county council. There were, by that time, no county council clerks serving who had been clerks of the peace before the Local Government Act, 1888, but there were naturally many who had become clerks of the peace since 1888, and in that capacity had automatically become clerks of their county council. These were all continued in office under the Act of 1931, subject to a provision for their retirement from office at the age of sixty-five, but as regards future appoint-

ments it was enacted that the clerk of the county council should be appointed by that body, and that in making the appointment it should be considered whether the appointee would be able and willing to undertake the duties of clerk of the peace and whether the county magistrates were willing to accept him. In practice every clerk of the peace and county council appointed since the passing of the Act of 1931 has been appointed to the dual office, but the clerkship of the county council is now recognized as the primary appointment. The position created by the Act of 1931 has been continued in the Local Government Act, 1933.

Another innovation in the Act of 1931 was that the appointment and salary of the clerk of the county council should require the approval of the Minister of Health, and that a person once appointed should not be dismissable by the county council except with the same approval. This is in substance a reproduction of the old position that he was to hold his office during good behaviour, but with the substitution of the Minister for the old complicated machinery for determining whether in fact his behaviour has been good.

The town clerk had never had any security of tenure. It has always been the position that he can be dismissed at any time by the town council which appointed him, that no approval of any superior authority was needed to his appointment, and that his salary was entirely at the discretion of the council. When urban district councils and rural district councils were created, their clerks were put in the same position as town clerks in these respects ; that is to say, they were to be appointed, paid, and dismissable, entirely at the discretion of the employing authorities. This insecurity of tenure

had in practice been overlooked, and it had become common for an agreement to be made with the town or district council's clerk, such as would be made with professional men engaged by any commercial undertaking, under which he should be entitled at least to a period of notice on the termination of his engagement. In 1929, however, there was a case in which an urban district council dismissed their clerk without notice, and were held by the High Court to be entitled so to do. This called public attention to the unsatisfactory position of these officials, and it was commonly said, rightly or wrongly, that changes which had taken place in the last generation, in the political outlook and social standing of the majority (or many) of the members of local authorities, introduced a new danger for a clerk who ventured to give unpalatable advice to his employers. However this may be, it was felt by Parliament that a responsible official ought not to be exposed to the risk of being ousted from his position at a moment's notice with no reason given, and the Act of 1933 provides accordingly that, where a clerk to a local authority has an agreement under which he is entitled to a period of notice of dismissal, that agreement is to be enforceable.

It has for many years been the law that medical officers of health could not be dismissed from their employment without the consent of the Local Government Board, whose functions have now passed to the Minister of Health, in any case where the local authority accepted from national funds a proportion of the medical officer's salary. In such a case, indeed, the appointment of the medical officer also required approval by the Board, now the Minister. Similar protection was extended to every sanitary inspector whose salary was partly made up from

national funds. While some few local authorities refused to accept any contribution to the salaries of their medical officer or sanitary inspector, desiring as a matter of principle to retain the appointment and dismissal entirely in their own hands, it has long been the almost universal practice to accept Government money and with it the above-mentioned measure of Government control as regards these two officers. The reason obviously is that the medical officer and sanitary inspector are constantly obliged to make adverse reports on the state of property, the existence of nuisances and other matters, where the interest of councillors who are property owners may be involved, and it is not fair to expect an official in such circumstances to resist the temptation to make a report less severe than the circumstances justify, lest he lose his position or have his salary reduced.

In more recent times a similar protection has been extended to engineers of local authorities concerned with highways, where the local authority have accepted from the Minister of Transport a contribution towards the maintenance of highways.

Partly by extending security of tenure, leaving the official free to speak his mind and carry out his duties without undue concern for the susceptibilities of his employers, partly because the ever-growing complexity of modern life makes it more difficult for the ordinary councillor to understand the business in which the official has become an expert, the tendency in recent years has been towards a much greater independence on the part of the official chief of every one of the departments into which a local authority's business is nowadays divided. While it may occur that the committee charged with the execution of some branch of a local authority's

duties will itself keep closely in touch with the chief official, and supervise his work in some detail, it is still more often found at the present day leaving much of the executive work in official hands. The position is indeed not unlike that which will be found in business. In an old-fashioned business the proprietors or partners might employ a manager, but would themselves keep an eye upon him and perhaps take as great a share as he in everyday affairs. In the more modern type of business organized as a company, a well-paid and experienced manager will probably be left with a large share of responsibility, subject to no more than a general control from the directors. The chairman or managing director may no doubt devote much time to working with the manager, and just so it will be found in many towns that the chairman of an important committee exercises a good deal of day-to-day supervision over the department of which his committee is in charge. It may even be found that the chairman gives to his chairmanship as much time as to his own affairs, but even so the other members of the committee probably will not. It is, moreover, usual for most members of a local authority to serve on two or three committees, another fact which tends to leave the practical execution of the local authority's duties very much in the hands of their officials.

This obviously tends to departmentalism, that is to say, to the administration of a local authority's business in watertight compartments, and to forgetfulness of what is after all the fundamental fact in modern local government, that the local authority is a unit, a corporate body whose duty it is to co-ordinate its own multifarious activities.

It has even been known for a local authority acting through one committee to be prosecuted by itself acting through another committee for some offence against the law. This departmentalism is one of the dangers to which the constant increase in the area and population of local government districts exposes us. While every one admits that it is an evil, it is by no means easy to suggest any complete remedy. Man does not become any less desirous of paddling his own canoe because the canoe is a municipal undertaking. If, for example, the chairman of the gas committee of a large local authority is himself a successful business man accustomed to doing as he likes in his commercial life, and if the gas engineer is a competent executive official, it is highly probable that the gas committee will go its own way even to the extent (as in cases which have been known) of breaking the law concerning nuisances from smoke, and ignoring the general instructions of the council in such matters as the purchase of supplies. One remedy which has been sought is to make a standing order, or establish a practice, by which no chairman shall hold office for more than a limited period. This has great advantages ; there are towns in which a man who has been re-elected at successive elections to the council has remained chairman of a committee in which he is interested for more than twenty years. On the other hand the rotation of office among chairmen may give undue power to the chief officials, by depriving these latter of the benefit of informed criticism of their work. Attempts have been made in some places to co-ordinate the work of departments through the general purposes committee of the council, or through regular periodical meetings of chairmen of committees and chief officials.

Under the modern pressure of business it is becoming more and more the tendency for the town clerk or clerk of the council to find himself in the position of a general manager. Even where it is recognized that divergence of interest between different departments, coupled with the magnitude of the interests involved, financially and otherwise, makes co-ordination unavoidable, there may be natural jealousy on the part of other chief officials at the assumption by the clerk of a primacy for which the governing Acts of Parliament make no provision. This professional and personal difficulty is enhanced by the fact that the town clerk was originally appointed simply as the keeper of the council's papers, and the person to conduct their correspondence, and need not have either experience or professional qualifications. He may, in short, so far as statutory requirements go, be no more than a clerk or grown-up office boy. When it came to be recognized in the nineteenth century that education and some kind of professional standing was desirable for the clerk of a local authority, it was almost unavoidable that candidates should be found among solicitors. In the early days of modern local government it was usually possible to find a local solicitor who would attend to the correspondence of the council and keep its records as a part-time occupation. He frequently accepted the position at an almost nominal salary, on the understanding that if any legal business arose it should come into his office. This practice is by no means extinct. Recently the author came across a case where the town clerk of a borough was receiving no more than the wages of a junior clerk, and had to provide his own staff. He recouped himself and made the employment worth his while (with the knowledge

of his employers) by professional fees which he received for their legal business, and by the introductions which his position brought him.

There was much to be said for part-time clerks ; notwithstanding that the system encouraged the clerk to find opportunities for charging fees, and at any time it might happen that the interests of the council were opposed to those of some valued private client, the part-time solicitor often brought to the council's affairs much shrewdness and knowledge of the world—qualities which helped to bridge the gap in outlook between his whole-time colleagues and members of the council or the local public. At the present day, however, the business of local authorities has become so vast, and (albeit without deliberate intent on his part or the council's) the managerial function of the clerk is so far outstripping the clerical and even legal, that almost everywhere clerks are being appointed on a whole-time basis, although, where the clerk is a solicitor, he may be allowed to charge fees as well as salary. It is obviously convenient where the business of the council is not sufficient to justify the employment of a separate solicitor, that the clerk shall hold this office. A solicitor, however, does not, as such, necessarily possess experience of public administration, or particular qualifications for managing a business so complicated as that of a major local authority to-day. A suggestion has accordingly been voiced (as by Sir Ernest Simon, a former Lord Mayor of Manchester) that the office of clerk to a local authority shall be frankly recognized as one which does not necessarily call for legal qualifications, but does call for education and experience in administration—that it shall, in fact, be treated as analogous to a post in the Civil Service of the Crown,

which is itself regarded as a separate profession. It cannot be said that this attitude of mind is usual. The most influential town clerks, and other representatives of local government as it is, are almost unanimous in maintaining that the town clerk should be a solicitor, even though it is becoming more and more general for him to have served his articles in a town clerk's office, and to have spent all his professional life in local government.

Where a town clerk or clerk of a local authority, whether a solicitor or not, has in fact acquired professional experience in administration, as distinct from law, it is plainly easier for him to assume the position of general manager of his local authority's affairs, and he should find it no more difficult than it is found by a first division civil servant to preside at meetings of professional colleagues and co-ordinate their work. From time to time there will be found in the papers devoted to local government and in other newspapers suggestions for the introduction in this country of what is called in the United States a city manager. A city manager, however, does not mean the same thing in different states and cities in America. Sometimes he is, during his term of office, the working head of all the business of the local authority; sometimes he is much more analogous to what is here called a city or borough engineer, other departments of the council's work than that of engineering being placed outside his purview. So long as English government retains its present form, co-ordination can probably be best effected by a tactful and competent clerk. It may or may not come about in the course of time that his special duty to co-ordinate will be recognized by Act of Parliament, but in any case success must depend on personality. It would be the

extreme of folly for a town clerk to interfere, for example, with the medical or scientific duties of the medical officer of health, or with the manner in which a city engineer supervised the laying of sewers or the surfacing of streets. It ought, however, to be possible for him, by the exercise of personal influence and common sense, to prevent the medical officer from issuing (as in one case within the author's knowledge) threatening notices to property owners which had no legal basis, and brought the administration of the city into ridicule, or to ensure that an engineer does not, as in another case the author can remember, land the borough in buying useless appliances invented by the engineer, on each of which the engineer received a royalty.

In modern times a large part of the duty of municipal officials consists in maintaining proper relations with members of the public. The property owner, the ratepayer, or elector, has a right to feel that if anything goes wrong in the local public services, or if any action taken by the council affects him in a way he thinks unfair, he can bring his grievance to the council's notice. Very largely the smoothness of working of the council's business depends on the tact and good sense with which complaints of this sort are answered by officials, and it is not the least part of the skill of a competent clerk of a local authority to keep in touch with the correspondence and public relations of all departments in which the council's work is carried out. Lately a further development in this direction has been noticed in the Press. The National Association of Local Government Officers has considered a system of "public relations officers," whose duty it would be to keep the local public constantly informed about a council's work. (See p. 48, note 2.)

Finally, the superannuation of local government officials must be noticed. A good many large authorities had already provided for this by special Acts of Parliament before the war. The Local Government and other Officers Superannuation Act, 1922, gave power for any large local authority which cared to do so to start a superannuation scheme ; the Act, in contrast to the local Acts, most of which were open to criticism on actuarial grounds, was carefully balanced so that benefits were related to the contributions required from officials and from the authorities employing them. The Local Government Superannuation Act, 1937, which came into force on the 1st of April 1939, was a compulsory Act ; that is to say, all the larger authorities were compelled to establish superannuation schemes, and the officials of smaller authorities came into the county schemes. Workmen and other subordinate employees will be, or may be, included, but the importance of the Act in the context of the present chapter is that it greatly increases security of tenure, and therefore adds to the practical independence of those officials through whom the local authority carries out its duties, or on whom it is dependent for advice. Few local authorities, however hard they find it to " get on with " an official, will go to the length of depriving him of pensionable employment, and, if an official's employment is prematurely terminated against his will, except for his own default, he has under the new Act pecuniary rights, which are uniform throughout the country. The worst that an honest and competent official need in future fear will be, if he is inconveniently conscientious, that some increase of salary or some promotion will not be made when he expected it. On this point it should be added that some

local authorities still debate all increases in public ; a practice which, while it may assist economy by preventing hole-and-corner jobbery, and has the merit that it makes officials realize they are not immune from criticism, has the drawback of being humiliating for the quietly conscientious man, and of inviting councillors to " play to the gallery " on a stage where it is easy to seek a reputation for zeal in the service of the ratepayer. Model standing orders issued in 1934 from the Ministry of Health will, where they are adopted, provide for proper discussion of promotions and of salaries without the disadvantages just mentioned.

Note 1 (p. 36). Affected by legislation from 1944 onwards, but the substance remains true.

Note 2 (p. 46). In 1946 a committee was set up under the chairmanship of the Parliamentary Secretary of the Ministry of Health, to advise local authorities upon this matter.

The position of officials of local authorities was greatly affected by the setting up in 1944 of the National Joint Council (Whitley Council) for the Administrative, etc. staffs of Local Authorities.

CHAPTER III

FINANCE

General

BEFORE passing to local government services in detail, a sketch is desirable of the manner in which all local government services are financed—since without money, and in modern times a great deal of money, no one of them could be carried on.

It has been already mentioned that in English law a corporation (which, it will be remembered, in a borough means the whole body of mayor, aldermen, and burgesses or electors, and elsewhere means the council of the county, district, or parish) has the status of an individual for legal purposes, and, *prima facie*, the power of doing what an individual may do. This is common law, the law, that is, apart from Act of Parliament. The common law doctrine has some influence still upon the powers of the corporation of a borough. Since such a corporation comes into existence at common law by charter from the King, although it depends on Act of Parliament for its procedure and almost all its powers, it could, if it had the money, do anything not specially forbidden by Parliament which an individual could do. A statutory corporation, like a trading company under the Companies Acts, or a local authority other than a council of

a borough, can do only those things for which Parliament has brought it into being. The practical difference at the present day between the powers of the council of a borough (or, to speak more accurately, those of the corporation acting by the council) and those of any other council is less than might be thought, because each of them is restricted in its spending. Even the corporation of a borough is rather in the position of a private person whose money has for some reason been settled in such a way that he cannot use it except under limitations.

Whence then do local authorities obtain their funds ? Some local authorities, especially those of the older boroughs, have profitable estates. The city of Bristol, for example, owns the Bristol docks, and the corporation of the City of London derives large revenues from ground rents. Except where revenues of this kind have been earmarked by Act of Parliament for special purposes, they can be used as a basis of the corporation's revenues, and the author remembers one small borough in which it was never, until recently, found necessary to raise money from the rates. It is, however, almost invariably found that at the present day local authorities derive their revenues, and are enabled to carry out their work, by a charge called a " rate " upon the inhabitants of their district. It was mentioned in an earlier chapter that the origin of rates as a regular system of local finance is to be found in Tudor times, when the abolition of the monasteries and the diversion of large funds to the King (or private persons to whom he gave those funds) made it necessary for relieving the poor to raise money " rateably " in parishes—that is, in proportion to the ability of the parishioners to pay.

In the course of years the funds thus obtained by the

parochial officials and later by other local authorities who succeeded to their powers, or were given a similar power by Parliament to raise money by rates, became the mainstay of local administration. Later we shall discuss some details of the rating process.

There have at different times in the last three centuries been many different kinds of authorities empowered to raise money in this way. At the present day the system has been made more or less symmetrical by the establishment in every local government area of a single rating authority, namely the council of the borough or urban district or rural district. This authority raises money both for its own administration and for that of other local authorities. Thus, where it is not the council of a county borough, it has to meet the expenditure of the county council, and where it is a rural district council it has to meet that of the parish council, since county councils and parish councils are not rating authorities. It has also to raise money for the miscellaneous joint bodies mentioned in Chapter I., as well as for the various committees of local authorities which have power to spend money but not to raise money.

The persons on whom rates are charged are, broadly speaking, householders and occupiers of other forms of landed property. While the early Acts of Parliament authorizing rates contemplated that the occupier of every building and every piece of landed property should be rated in proportion to his ability to pay, modern statutes have made great inroads on this principle. In order to encourage agriculture, all agricultural land is now relieved from rating, and from about 1930 substantial relief has been granted to many kinds of industrial property. This subject is extremely technical, and what

is important for the readers of this book to bear in mind is that by the exemption from rating of these large blocks of property it is becoming necessary to levy rates in larger amounts on what remains—although it is right to say that the Local Government Act, 1929, which put the present system into something like its present form, made provision for Government grants to balance these exceptions. Government grants, then, are the second important means by which local authorities finance themselves. There have for many years been Government grants to encourage many forms of local service. The police grant has been already mentioned. There are large grants in aid of the maintenance of highways and of education. Parliament has constantly made money available for various health services. Under the Act of 1929 an attempt was made to consolidate many of these grants, and, although the system has anomalies, the position, broadly speaking, is that every local authority derives a proportion of its revenue from the national exchequer.

In some areas where local resources are small the Government grant, which is based partly on the principle of levelling inequalities between different areas, amounts to more than half the annual income of the local authority.[1]

The third main source of money for local authorities arises from their trading services and from the rents of property. They may own markets, trams, buses, and many other forms of enterprise such as gas, electricity, or water, and practically all boroughs, urban districts,

[1] In 1942–43, excluding income and expenditure directly attributable to the War, local authorities spent some £420,000,000 on services other than trading services. Of this, about 48 per cent. was from the rates. Government grants amounted to about 40 per cent., the balance coming from rents, fees, etc.

and rural districts own houses for the working classes ; these last, however, may be liabilities rather than a revenue producing asset.

Loans

So much for revenue. Where a local authority finds it necessary to incur capital expenditure, it does what a business does, that is to say, it borrows. The private business man or partnership will borrow by bank overdraft or by raising a mortgage on the business property. A company may do the same or may issue debentures or new shares—all of which methods are borrowing in one form or another. The money for paying the interest on the overdraft, or mortgage, or debentures, or shares, has to be earned by the business. The local authority has no share capital such as a company possesses, and it has not been given by Parliament power to issue debentures. It can mortgage its property, but more often the manner in which it raises capital is by mortgage of its rates. It has been said above that this is not the same thing as issuing debentures ; it is not the same in law, but in practice it has a similar result. The persons who lend money to the local authority on the security of the rates, or on any other security, have a right to be paid stipulated interest. Parliament has laid it down that a local authority, except where it has different powers under a special Act, shall not borrow except with the sanction of some department of the central Government. Most loan sanctions are issued by the Minister of Health, the only important exception under the general law being sanctions for the electricity undertakings of local authorities, which are issued by the

Electricity Commissioners. As regards certain services for which loans are desired, the Minister of Health acts on the advice of some other department of the Government, such as the Minister of Transport or the Board of Education, and in other cases he makes his own investigation—often by a local inquiry conducted by one of his inspectors. It is an invariable feature of loans raised by local authorities (which distinguishes them from loans raised by companies) that they have to be paid off within a certain time. This depends in part on Act of Parliament and in part upon the practice of the sanctioning department. The result is that loans of local authorities constitute a valuable security ; the lender is sure of his annual interest, and sure also of repayment of his capital—except in the improbable case of default by the local authority through some local industrial disaster. While default upon loans by local authorities, as indeed by national governments, has been known in other countries, it has never been known to occur in our own country, however hard certain local authorities have been hit by industrial depression. The extent of this borrowing has been the cause in recent years of some public alarm. In the county of Surrey, for example, the loan debt rose between April 1934 and April 1939 from, roughly, £3½ million to £6 million. Cessation of capital works during the War brought it down to £5¼ million by April 1946, but this was no more than a temporary lull. Surrey is one of the wealthiest counties, and there is probably no more need for alarm than there is about the heavy capitalization of an important company. Elsewhere the burden may be less in figures but more serious in fact. There is no one cause for figures of this kind, unless we lump together all the causes and

say that they amount to a new twentieth-century conception of the business of government as being the socialization of available resources.

It is said above that the security for loans raised by local authorities is most often the rates of the borough or district. Whether this is so, or the loans are technically supported by the security of some different piece of property, it is evident that the payment of the interest is a charge upon the annual revenue, and is one of the factors which must be taken into account in determining what money shall be demanded from the ratepayers. The rates which have to be levied differ widely in different places. In 1947 figures showed rates in the pound of eight shillings and fourpence in some country parishes as against twenty-six shillings or more in some hard-hit areas in Wales. Broadly speaking, it may be said that the poorer the district, given equal population, the higher the rates which must be raised, for the obvious reason that relief of the poor, the abatement of overcrowding, the clearing of slums, and many other public services, will cost more where people are poverty-stricken than where they are prosperous. As is said above, one of the objects of Government grants in aid of local expenditure is to reduce these inequalities between districts. On the other hand, the very fact that greater expenditure is usually necessary in the poor district means that proportionately larger loans have to be raised, and in consequence the loan charges (that is the annual interest and the sums set apart for ultimate repayment of the loan) become a greater burden.

Having spoken of the manner in which local authorities obtain their money for carrying on their public services it is logical, before explaining those public

services themselves, to speak of the safeguards against improper spending of the money. The necessity of obtaining sanction from an outside authority, which may be Parliament itself or may be, and usually is, some department of the Government, before a loan is raised, has been already mentioned. This in itself protects the ratepayers against extravagance or ill-advised spending of capital moneys, since the sanctioning department (or the parliamentary committee, if a local authority seek direct power from Parliament to raise a loan) will require to be satisfied, at least in outline, as to the manner in which the money will be spent.

To take a normal case : a local authority propose to erect a town hall or to carry out a sewerage scheme. When the local authority and its officials and its consulting engineer or architect on the one hand, and the advisers of the Minister of Health upon the other, have agreed on the general lines of the proposal, the matter is ripe for a local inquiry. At this stage the checking of the local authority's proposals in Whitehall, in the light of the experience of the whole country and of the local authority's own financial position, will very largely have been completed, and at the inquiry the public is taken into the local authority's confidence to the extent that it chooses to attend the inquiry or read the local newspapers. This is usually done by the full evidence given by the chairman of the committee or consulting engineer, or by the responsible chief official of the local authority. Such an inquiry is not invariably held, but it is normal. Most often it is held by an inspector from the Ministry of Health, and any member of the public can appear and raise objections or ask questions, although in fact it is comparatively rare for serious opposition, or even serious

interest on the part of the public, to be shown. The merit of these inquiries lies rather in their giving an opportunity to the public to be present, and to be informed of what is happening, an opportunity which reduces any impression that might otherwise exist that money was being spent in a hole-and-corner way. The real assurance that the ratepayers will get value for their money lies not so much in the formal inquiry, as in the fact that some time earlier negotiations will have taken place between the local authority and the sanctioning department. In any important matter the local officials, perhaps accompanied by the chairman of the committee of the council concerned with the particular service, will have visited Whitehall and discussed their proposals with the engineers or architects or medical or financial advisers, or administrative officers, of the Minister of Health. These officers of Government, seeing as they do the proposals of local authorities from all parts of the country, are in a position to point out any pitfalls into which the local authority's advisers might otherwise fall. It is also usual, where major works are carried out, to employ an independent consulting engineer, or an architect with experience of the particular class of building to be erected, and professional men of this type can often save their fees many times over by their knowledge of the successes and failures which have taken place elsewhere.

It is not until the Minister's sanction to the raising of the loan has been received that the local authority is in a position to enter into a firm contract for works involving capital expenditure. It is, however, usual to have a provisional contract before this stage. The actual contract to be made by the local authority for carrying out works financed by way of loan does not require the

Minister's approval, but Parliament has laid it down in the Local Government Act, 1933, that wherever possible the contract shall be based on tenders obtained by public invitation. Although many local authorities would prefer to invite tenders only from selected firms, and consulting engineers and architects often throw their influence in favour of this system, publicly invited tenders have been normally compulsory as regards contracts for purposes of public health since 1875, and section 266 of the Local Government Act, 1933, extended the principle to all contracts of local authorities. Under that section all contracts, whether the money is to come from capital or from revenue, must be made in accordance with the local authority's own standing orders, and, in regard to contracts for the supply of goods or materials or the execution of work, the standing orders must provide that tenders shall be obtained by public invitation, except in exceptional cases which the standing orders themselves have previously designated. It may be admitted that this rule has sometimes led to the acceptance by a local authority of a tender at a price lower than that at which the work could be carried out properly, with the consequence that the contractor has been unable to fulfil his obligation, and that some detriment to local authorities and some heartburning on the part of reputable firms has followed. At the same time, the dangers which would exist if local authorities or their officials were in a position to grant contracts to firms selected by themselves have been so strongly illustrated in other countries, and are indeed so obvious, that there is no likelihood that in this country Parliament will depart from the principle of open tender. It is said above that the actual contract does not require ministerial approval, but obviously, where a

large part of the cost of the work is to be met from Government grants, the Minister who controls the money is in a position if he chooses to require the contract to be submitted to him.

Audit

Not only the spending of capital moneys derived from loans or Government grants but also the spending of revenue derived from rates, or from the rents of a local authority's property from tolls or trading services, is by Act of Parliament subject to audit. There is a good deal of misapprehension about the scope and nature of this audit. Every public company is required by the Companies Acts to have its accounts audited by qualified persons, and in some cases, *e.g.* railway companies, the audit required by statute is elaborate. In most cases, however, the audit of a company's accounts, or those of any trading firm, involves merely a certificate by the auditors that the accounts have been properly prepared, and that according to the information furnished to the auditors they show the true state of the company's books. The audit of the accounts of local authorities was originally of something the same kind. The Municipal Corporations Act, 1835, contained a provision which was reproduced in the Municipal Corporations Act, 1882, and is now to be found in the Local Government Act, 1933, for the appointment in every borough of three auditors, one by the mayor and two by election by the persons qualified to elect councillors. It is evident that this is no safeguard whatever, even for the accuracy of the accounts, since the mayor's nominee and persons chosen by the electors at large may not have

any knowledge of accountancy, or even of how a balance sheet should be drawn up.

Attempts have from time to time been made to introduce in boroughs the system to be described in the next paragraphs, which system applies to all other local authorities, namely, that the accounts are audited by an officer of the central Government; but hitherto municipal corporations as a whole have, for reasons of prestige, stood out for their right to have their accounts audited by the mayor's and the elected auditors. Nevertheless the insufficiency of this audit is so patent, that a number of municipal boroughs have obtained from Parliament power in local Acts to appoint professional auditors as well, who will, at any rate, see that the accounts are properly prepared. These professional auditors have, however, no more power than the elective auditors to say whether the money has or has not been properly spent. They are solely concerned with seeing that the figures are properly presented.

The other system, which prevails throughout the greater part of local government, is audit by officers called "district auditors." These were originally appointed under the Poor Law Amendment Act, 1834, by the Commission set up by that Act, to audit the accounts of boards of guardians under the poor law as reformed in that year. In course of time the powers of the Poor Law Commissioners passed to the Local Government Board, and in 1919 to the Minister of Health, and with the coming into existence of new forms of local authority throughout last century (as has been described in an earlier chapter) the functions of the district auditors expanded. When county councils were brought into existence in 1888, the system was, after much discussion

in and out of Parliament, applied to them in preference to the municipal system of elective auditors, and since that year there has been some extension of district audit even into boroughs. At the present day district auditors appointed by the Minister of Health audit the accounts relating to education, housing, the poor law, and the administration of the law relating to rating and valuation, even in boroughs. Elsewhere they audit all accounts of all local authorities. It has been said that the district auditor is appointed by the Minister of Health, but it is vital to the comprehension of his functions to understand that he does not carry out his audit under supervision or directions from the Minister. He is an independent officer with statutory duties to perform. His function is not merely to ascertain and certify that the accounts are properly presented, as is done for companies by their auditors and (in those boroughs where district audit does not apply) by professional auditors if these are appointed; he has a much more important function. It is his duty to disallow in the accounts any item of expenditure which, in his opinion, is contrary to law. The effect of a disallowance is that the local authority must somehow find means of reimbursing the fund from which the money has been drawn. In some cases it may be possible to secure repayment from the person who received the money. The district auditor has, however, in addition to the duty of disallowing any payments not authorized by law, a power of surcharging the members of the local authority who authorized the payment. The effect of surcharge is that the persons named by the auditor must, out of their own pockets, make good to the local authority's funds the amount which has been spent without lawful authority. It may sometimes be that an

item of account is disallowed as being contrary to law, merely because it has been entered in a place, or as a charge against a fund, where it is not permissible, although it would be permissible if otherwise entered or charged against some other fund. In this case the correction is a matter of book-keeping, and there is no need for surcharge, or for an attempt to recover the money from any other source. The power of surcharge is, however, extremely valuable, since councils would not take seriously a mere decision that there had been some irregular or illegal payment if the matter ended there.

The decision of the district auditor, making a disallowance or a surcharge, may under the Local Government Act, 1933, be the subject of appeal to the Minister of Health or to the High Court, if the amount exceeds £500, the only appeal is to the High Court. Where a disallowance and surcharge has been made, and the amount exceeds £500, then, unless there is an appeal to the High Court, and unless that appeal succeeds, the member on whom the surcharge has been made becomes for a time disqualified for holding office.

Other Safeguards

Among safeguards against improper spending of the money of local authorities we have mentioned the standing orders they are required to make, which, if based upon the model standing orders, preclude their accepting tenders for contracts other than the lowest tender, except upon proper professional advice.

There are other standing orders in the model series issued from the Ministry of Health which, broadly, are

aimed at the same general purpose. While it is not obligatory for local authorities to have standing orders, except in regard to the manner of making contracts, most local authorities have found standing orders necessary in practice, and, since the Local Government Act, 1933, after which the Minister in 1934 issued model standing orders based on the results of previous experience, local standing orders have become more homogeneous, on the model lines.[1]

Those which may here be particularly mentioned deal with the manner of making payments either on capital account or for ordinary current expenditure, and with the mode of ensuring that members of local authorities, who are interested in any matter which the local authority has to consider, shall not take part in the proceedings.

Section 76 of the Local Government Act, 1933, imposes a penalty on any member who takes part in the discussion or in the voting on a matter in which he has a pecuniary interest, and provides for the registration with the clerk of the local authority of shareholdings and other interests of the members which are declared by them in pursuance of the section. The model standing orders, where adopted, provide that not merely members but officials shall make it known whether they are interested in any particular matter, and special care has been taken to deal with cases of nepotism—that is, the appointment to office under a local authority of a relation of a member or senior official. Members themselves, and persons who have been members within the last twelve months, are precluded by the Local Govern-

[1] The model standing orders were placed on sale in 1934, price 6d., from H.M. Stationery Office.

ment Act, 1933, from being appointed to paid office under a local authority, but there is no such statutory prohibition applying to their relations, and the model standing orders fill this gap by requiring, where adopted, that near relationship to a member or existing senior official shall be disclosed by candidates.

Though it is not suggested that corruption, bribery, and similar malpractices are proportionately more common in connection with the work of local government than in other spheres of life, it would be idle to deny that they exist, or even that in some directions local government work offers special opportunities.

The Acts of Parliament dealing specifically with bribery and the taking of secret commissions are three in number, namely, the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and the Prevention of Corruption Act, 1916. The first of these was passed as a direct consequence of scandals in connection with local government, and it deals only with inducements corruptly given or received to the intent that a member or official of a public body shall do something which otherwise he would not do, or use his influence to bring it about that something is done which otherwise would not be done.

The Act of 1906 contains similar provisions of general character, that is to say, it applies to commercial life, and even to bribery and corruption in private life, as well as to these offences in connection with public affairs. The Act of 1916 increases the penalty in certain cases of bribery, making it possible for the court to pass a sentence of penal servitude as well as the imprisonment and fine authorized by the earlier Acts, and, in connection with public contracts, it lays it down that an inducement

given or received with a view to the obtaining of a contract is to be deemed to be corrupt unless the contrary is shown. It remains the law, as under the earlier Acts, that an inducement offered to a person, or received by a person, for persuading a local authority, for example, to pass a resolution which it would not otherwise have passed, relating to some matter other than a contract, has to be proved affirmatively to be given with a corrupt motive before the Acts apply—a loophole through which many dubious transactions escape from prosecution.

Under these Acts no prosecution may be launched except with the consent of the Attorney-General, and in practice very few are launched, by comparison with the known extent of the evil at which they are directed. In nine out of ten cases it would not be possible to obtain a conviction except on the evidence of accomplices, tainted evidence which the Director of Public Prosecutions and the Bribery and Secret Commissions Prevention League (which works in close touch with those departments of the central Government which are interested in the matter) do not feel can be relied on in legal proceedings of this class.

In addition to these provisions in the Prevention of Corruption Acts, and the well-known provisions dealing with bribery at elections, which it is not proposed to discuss in this chapter, there are certain provisions in the Local Government Act, 1933, which must be noticed.

Until the passing of that Act the legal position was that members of local authorities were (in many cases, not always) precluded from taking part in discussion of a matter in which they had a financial interest, and were also disqualified for membership of a local authority if they

held a contract with the authority. This, in practice, was found too wide and led to almost ludicrous cases, as where a trifling purchase was made by an official for the purposes of the local authority from an assistant in a shop belonging to a councillor. The Act of 1933 accordingly abolished this rule of disqualification, except for persons who were employed by the council, and section 76 substituted a rule (uniform for all local authorities) that a member might not take part in the proceedings on any matter which affected him financially, unless relieved from this disability by the Minister of Health (or, in case of a parish council, by the county council), and that he must make a declaration to the council, which was to be recorded in a book kept for the purpose, of any contract or other matter made or transacted by the council which affected him. This section was not new law (except in so far as in regard to some transactions it made the law less drastic and more workable), but it was for the first time a uniform code for all authorities.

Section 123 of the same Act requires officials to disclose to their employing authorities any matter transacted by the authority in which they have a pecuniary interest, and the power of local authorities to make standing orders for the conduct of their business has been already mentioned.

Types of corruption or improper inducement which come to light in connection with local government fall, broadly speaking, under such headings as the following :

There is first the direct payment to a member of a local authority or a senior official to use his vote or his influence in a particular direction. It may be the granting of a contract, or it may be the passing of a resolution

to take some action such as the making of a road in a particular direction, which will enhance the value of certain property, or to defer action by which the value of property might be diminished. As regards contracts, we have spoken of the rule in section 266 of the Local Government Act, 1933, that local authorities shall not reject the lowest tender in a case where tenders are invited except after proper consideration, and shall not place their contracts without inviting tenders in those cases where tenders are appropriate. Such rules help to eliminate the giving of direct bribes to secure contracts, provided the rules are properly carried out, and, in particular, that tenders when invited are sealed and only opened in the presence of several persons.

Secondly, there is the giving of inducements to responsible officials of local authorities to accept short weight, short measure, or inferior materials. It is impossible to say to what extent this evil extends, but the steps taken by large trading organizations themselves to put a stop to it indicate that the evil does exist.

Thirdly, there is the giving of bribes, often of comparatively small amounts, to subordinate inspectors and similar officials, to refrain from reporting sanitary defects or bad workmanship in works which it is their duty to inspect. In one important class of works, namely, roads, bridges, and building work, local authorities could probably do more than they have hitherto done to remove temptation from their subordinates by employing qualified clerks of works at sufficient wages. In regard to the inspection of property to discover defects, both old property and buildings being newly erected, the steps taken in recent years by the professional organizations whose members are concerned to improve

their qualifications and standing should also assist in reducing corruption — although experience, unfortunately, shows that a good salary and good qualifications are no safeguard in themselves ; they may simply bring it about that a corrupt official is so highly trusted, or so skilled in camouflage, that his opportunities are more safely taken.

Fourthly, there is selling of confidential information. It may be of proposed developments affecting property. It may be the sale of particulars of property or of processes in a factory to which the official has access in the course of duty, or the disclosure to rival contractors of the prices in bills of quantities for works. The market is limited for information of this kind, but all these practices have been known.

Fifthly, there is the evil of the bringing to bear of undue influence to secure appointments. This influence may be brought to bear either on councillors or on senior officials. While it is usual at the present day for advertisements announcing vacancies to state that canvassing in any form will disqualify a candidate, this is not effective except to prevent direct and open canvassing. Here, again, the model standing orders issued from the Ministry of Health contain, as already mentioned, provisions designed to reduce the evil of appointments to paid office through personal influence.

Corruption, however, is protean. If crushed in one form it may always spring up in another. While its eradication is too much to expect, honest persons, whether councillors or not, can keep it in check by constant vigilance, and by support of the Bribery and Secret Commissions Prevention League, which has paid special attention to such matters in the local government

world, and has given valuable advice not merely to the Government but to local authorities who have consulted it.[1]

Rating

The principle of the Statute of Elizabeth, already mentioned, so far as it dealt with rating, was that the inhabitants of a parish were to contribute to the necessary expenses of relieving the poor and other duties of the overseers, according to their ability to pay. In those days the natural measure of ability to pay was the size of the house or farm or other premises which the ratepayer occupied. In later generations, attempts were made to levy rates on stock in trade or other moveable property, but the practical difficulties were too great, and, early in the nineteenth century, it became settled that ratepayers should pay only on the value of their land, houses, or other immoveable possessions—except the parson, who was rated on his tithe, the value of which was easily ascertained by his parishioners. Clerical tithes continued rateable until they were abolished in 1936, when a sum of money was made available by Parliament to compensate the rating authorities (who otherwise would have lost by their abolition), just as other steps were taken to compensate the clergymen who had received them. The principle mentioned above, that a ratepayer should pay according to the value of his property to him, was for centuries left to be worked out by the parochial authorities in each parish, by whatever local arrangements were found best, but

[1] Particulars, and copies of the League's News Sheet, can be obtained from its Secretary, 39 Jermyn Street, London, S.W.1.

after the Napoleonic wars it was found necessary to introduce a uniform rule, and this was laid down as being that property should be valued according to the rent it would command. This is still, in spite of numerous changes in the law, the basis of the system. The test is not the rent actually paid which may be fixed low for some special reason, as that the landlord is a friend of the tenant, or may be fixed abnormally high because there is a temporary demand for the particular piece of property; it is the rent which the house, or shop, or whatever it may be, would command on a yearly tenancy in the open market. This principle is simple enough when applied to ordinary houses and shops, but becomes more difficult when applied to special properties, such as railways, or electric lighting cables, or even public houses. A mass of technical rules for valuing these properties has been worked out. In addition to complications of this kind, many of them due to the creation of types of property which were not foreseen by Queen Elizabeth, or even when the rule for determining valuations was settled a hundred years ago, fresh inroads on the original principle have been made by Parliament in its desire to give help to certain interests. The first big inroad was in 1896, when agricultural land was relieved from half its rates in the hope of stimulating agriculture, the other half being paid to local authorities by the national exchequer. By very recent legislation this exemption of agricultural land has become total, a fiction having been introduced by Parliament that such land has no value. By the Local Government Act, 1929, a further big inroad on the old simple rules was made, when, in hope of stimulating trade revival, an exemption of half and in some cases three-quarters of the rates was

given to certain manufacturing and other industries. Once more a scheme was adopted by Parliament, by which the loss to the funds of the rating authorities which would have been caused by these exemptions was to be made good by the national exchequer. So we have here a further illustration of what has been previously mentioned, namely the feeding of local funds, which are spent by local authorities, from national funds. Opinions differ on the question whether this " derating," as it is inelegantly called, has had the desired effect in benefiting industry, and opinions differ still more sharply on the question whether the help given by the exchequer to local funds has really been a fair equivalent for what they lost upon derating. However this may be, the position has been brought about that not many classes of property except ordinary houses, shops, and offices, now pay rates according to the old principle of a valuation in the open market on an equal basis for all ratepayers.

As regards the actual valuing of property on which rates are to be paid, that is, the determination of the rental which a tenant from year to year would pay, it rests with the ordinary local authorities to fix this in the first place (except for railways, for which a special assessment authority was established by Act of Parliament in 1930). A valuation list is published and is open to inspection, showing the value placed for purposes of rating upon every property which is not exempted, and showing also whether it falls into any of the classes which are entitled to partial exemption. Any person who is aggrieved by the value put upon his property, or by the omission or under-valuation of some other person's property (which, of course, would mean that

ratepayers properly entered in the list would pay more in proportion), has a right to appeal to an assessment committee. These assessment committees were established in the last century. In the first place the committees acted for the areas of the poor law unions which are mentioned in an earlier chapter, and were appointed by the boards of guardians, simply because there was no other convenient machinery for appointing them. Under the Rating and Valuation Act, 1925, assessment committees are now appointed by the councils of counties and of county boroughs, and, outside the county boroughs, usually act for a group of rating areas. Their functions are judicial ; that is to say, they have to determine according to law disputes about value which have arisen between a rating authority and a private person. Their decisions can be reviewed by the ordinary courts, in something the same way as decisions of a bench of magistrates. It is a curious outgrowth of the English system of local administration that these judicial duties affecting the charges paid on property should be performed by persons appointed by elected local authorities, and therefore subject indirectly to political or electoral pressure, whereas the similar duty of deciding on the valuation for purposes of income-tax is performed by commissioners appointed, as judges and magistrates are appointed, by the King. The explanation is of course historical. Probably the assessment committees do their work, upon the whole, better than might be expected, and certainly better than they did a generation ago, when their unreliability was a byword amongst persons interested in local government. They are, however, exposed to obvious temptations ; there is, first of all, an opportunity for keeping down the valuation on property

in which members and their friends are interested, and, until recently at all events, a seat on the assessment committee was much coveted for this reason. There is also the rather more subtle temptation to keep down all valuations in their area, because numerous Government grants depend on the poverty of the area as measured by the amount of rate in the pound which is levied, which will be higher in an area with low valuations than in one where the values are high. In order to keep watch on rating authorities and assessment committees outside county boroughs, every county council, except the L.C.C. by the Rating and Valuation Act, 1925, must appoint a county valuation committee, which has the right to object to a valuation list on the same grounds as has an individual ratepayer, or to appeal to the courts if the county valuation committee thinks that an assessment committee has gone wrong. These county valuation committees have, no doubt, done much to produce even valuations between one assessment area and another in their counties, but even they cannot ensure that uniform principles of valuation are observed between one county and another, and they have to face the same temptation as an assessment committee—to keep values down in order that Government grants may be increased.

The whole process of valuation for local rates is watched by a central valuation committee, appointed in part by the Minister of Health and in part by the associations of local authorities. This central committee issues recommendations, which amount almost to a code of sound practice[1] in regard to valuation, but it has no

[1] These published recommendations and a Report which the Committee published on the work of the twelve months ending on March 31, 1938, can be obtained from H.M. Stationery Office, and should be studied by readers who are interested in the working of the rating system.

power to make its recommendations effective, or to intervene or take proceedings in the courts in any particular case. It is entirely advisory.

We have spoken above of the relation between the value placed on property and the rate in the pound at which the rate is levied. With a view to equality between one ratepayer and another, the system is that—when the rating authority have added up the valuation list and found what is the total value of all properties on which rates are to be levied, and have decided how much money must be raised—they fix a rate of so many pence in the pound of value, and levy this throughout their district. The amount of money produced in any district by a rate of one penny in the pound provides a theoretical standard for measuring the district's wealth or poverty. Where a penny rate produces only a small sum in proportion to the population, the district is, *prima facie*, a poor one, and a proper recipient of assistance from the national exchequer ; hence what is said above, about the tendency of rating authorities and assessment committees to keep values down. Within a particular area it makes no difference whether valuations are correct, or are too low or too high, so long as every one is treated alike ; a low valuation means a high rate in the pound, and vice versa. It is when inequalities come in, either between particular ratepayers or between one district and another, that the unfairness arises of uneven valuations.

The importance of a uniform standard arises not merely in regard to Government grants. In addition to local authorities, namely the councils of boroughs, of urban districts, and of rural districts, who are both spending authorities and rating authorities, there are

others to be considered who spend money which they do not raise. There are county councils and parish councils, amongst local authorities, who have no power to raise rates, and obtain their funds by what is called a "precept" addressed to a rating authority—in the case of the parish council to the rural district council, and in the case of the county council to the councils of boroughs other than county boroughs, of urban districts, and of rural districts. There are also bodies such as water boards, joints boards for maintaining hospitals, and some few others, which obtain their funds by precept in this way.

Acquisition of Land

For something like a century it has been established that local authorities who require land for the purposes for which they are constituted, and equally that railway companies, water companies, and other public undertakers, may purchase it not merely by agreement from a willing seller but by compulsion. This power of compulsory purchase of land has been a good deal extended by modern legislation. Under the Town and Country Planning Act, 1932, planning authorities may, for example, purchase land not merely for their own use, but also if it seems that its successful planning for other purposes is jeopardized by the existence of numerous small plots. It used to be a common complaint that, when a local authority or public undertakers were in the market for land, its price was raised against them, since normally the works for which the land was required had to be carried out and there might not have been other land equally suitable. It is not necessary to suggest that

landowners who raised their prices in this way were guilty of conduct worse than that of any trader, who holds goods for which there is a demand and which cannot be obtained elsewhere. Ordinary economic causes enable him to raise the price ; the process may be found described in Mr. Bernard Shaw's *Widowers' Houses*. In course of time it became usual, where land was purchased compulsorily, to add something to the price to compensate the seller for having to part with it against his will. This was felt, in the early years of this century, to be bad from a public point of view, and accordingly the Town and Country Planning Act, 1932, the Public Health Act, 1936, and other Acts passed in the present century have provided that the price is to be calculated as if the seller was willing to sell and was not doing so under compulsion. By virtue of the Acquisition of Land (Assessment of Compensation) Act, 1919, the claim of the seller is generally heard, unless the parties otherwise agree, by an arbitrator who is himself appointed jointly by the Lord Chief Justice, the President of the Law Society, and the President of the Chartered Surveyors' Institution. Under some Acts it is possible for parties to agree that the claim to compensation need not be heard in public, and this may occasionally be advantageous, as, for example, where either party does not wish it to be known what price is paid. On the other hand the official arbitrators, appointed by the Lord Chief Justice and others as mentioned above, have a special experience in dealing with claims for compensation, and this should mean that claims will be more quickly heard than they would otherwise be, with a consequent saving in expense. The same official arbitrators also hear claims to compensation in respect of

other matters than compulsory acquisition of land ; for example for injurious affection, or for betterment (that is, a claim by a local authority to be paid by a landowner for having carried out works which improve the value of his land), under various statutes.

Note 1 (p. 75). Fundamentally affected by the Town and County Planning Act, 1944. See notes on page 138.

For valuable information regarding developments between 1937 and 1947 readers are referred to papers published by the professional bodies concerned, such as the Institute of Municipal Treasurers and Accountants, the Incorporated Association of Rating and Valuation Officers, and the Society of Clerks to Assessment Committees.

CHAPTER IV

LOCAL LEGISLATION—BYELAWS

LOCAL authorities do some things through their officials, servants, or contractors ; some things they require shall be done or not done by other people. To take simple illustrations : they provide sewers and require the owner or occupier of property to have drains connected with those sewers ; they maintain pleasure grounds, and require that persons using the grounds shall therein enjoy such pleasures only as the local authority approves ; they provide hospitals, and compel persons suffering from infectious disease to have recourse to them. In almost every one of the activities of a local authority this dual nature can be seen. Their power to do things, and their power to compel a private person to do something, or to refrain from doing what he likes, both arise from Act of Parliament, for (as we have seen in an earlier chapter) local authorities in this country have, for practical purposes, no powers except those conferred on them by Parliament. Most of their more important powers will be found in Acts of Parliament which apply to the country as a whole, or, if not so applying, can be put in force anywhere by adoption or some other simple process ; these Acts, that is to say, are not restricted to particular localities. It is, however, open to any local authority of higher standing than a parish council to

promote a Bill asking Parliament to confer powers upon it, either to do things or to compel the inhabitants of its district to do or to refrain from doing them. Such a Bill, if passed by Parliament, becomes a "local Act," and this local legislation has in the past contributed many precedents which have formed the basis of provisions in the general law. It is, indeed, one of the characteristic features of the British legislative system that these experiments can be tried in particular places where a local authority is sufficiently enlightened or sufficiently ingenious to seek to supplement the general law. There are, however, substantial checks on the obtaining of powers of this kind. The promotion of a Bill is an expensive process; while some local authorities promote Bills frequently, most regard it as a luxury to which they cannot resort except at long intervals or when some special need arises. Moreover, fifty years ago it dawned on Parliament that the process of special local legislation might, if not checked, prove oppressive to the private citizen, and would certainly lead to unreasonable and inconvenient divergence of the law between one district and another. From 1884 onwards, proposals of local authorities for legislation of this kind have accordingly been dealt with in both Houses of Parliament by special machinery, designed to ensure that new powers are not given without adequate proof of their necessity, and that when given they are properly linked to pre-existing powers. It cannot be said that the desire of Parliament to impose reasonable limits upon local legislation has always been achieved. Extraordinary provisions can be found in force. A wealthy local authority may promote Bills at short intervals; further, owing to shortage of parliamentary time for full con-

sideration, the promoters often succeed in obtaining powers which do not work well with those available in the general law. It has become necessary for a person who wishes to know what powers a local authority possesses, or what is the law with which as a private citizen he must comply, to inquire not merely what general Acts of Parliament there may be, but whether, in a particular place where he lives or in which he is interested, those general Acts have been supplemented by local legislation. In a large town he will almost always find that the law is different from that prevailing elsewhere.

In addition to local legislation in this sense, that is, special Acts of Parliament conferring on a local authority a power to do something or to compel other people to do it, there is another type of local legislation known as "byelaws," enacted not by Parliament but by local authorities themselves.

Every local authority from a county council to a parish council has the power of making byelaws for some purposes, but those purposes have been defined by Act of Parliament, and without power given by an Act of Parliament no byelaws may be made. A local authority cannot, by byelaws, confer powers on itself; it can only impose obligations or restrictions upon other people. Some byelaw-making powers have been conferred by local Acts of Parliament such as we have just described, but the majority are to be found in general legislation. There are from forty to fifty topics on which byelaws may be made under the general law.

When Parliament first began to confer byelaw-making powers, it empowered the local authorities then existing to make byelaws without requiring them to be con-

firmed by any other body. Although the Municipal Corporations Act, 1835, included a provision by which the King in Council could disallow a byelaw made thereunder, the byelaw, unless so disallowed, took effect without any confirmation. A little later Parliament introduced the practice of requiring byelaws to be confirmed by one of the Judges of the High Court or by a Court of Quarter Sessions, and about the middle of last century it made up its mind that the proper thing was for all byelaws to be confirmed by some Minister of the Crown. The confirming authority for byelaws may be a Secretary of State, or the Board of Trade, or the Minister of Transport, or the Minister of Health (in isolated cases other Ministers). The great majority of local byelaws require, before they come into force, to be confirmed by the Minister of Health as successor to the Local Government Board. (See p. 83, note 2.) For most byelaws made by local authorities, a uniform procedure is now laid down by the Local Government Act, 1933, designed to secure that before they come into force their requirements shall come to public notice. This procedure comprises publication of a notice in the local Press and the deposit of the byelaws for local inspection by the public. In some cases Parliament has also required a notice in the *London Gazette*.

Once byelaws are confirmed they take effect as part of the law equally with an Act of Parliament, subject to this, that if the Courts find when proceedings are taken for enforcing a byelaw that it is beyond the powers of the byelaw-making authority, or is unreasonable, or objectionable on certain other grounds, the Court may quash the byelaw. In a few cases also, the Minister of Health has power to require a local authority to revoke

its byelaws, and, failing compliance, to do so himself. As confirming authority for byelaws, the Local Government Board between 1871 and 1919 (when the Board's powers were transferred to the Minister of Health) had evolved certain rules, which have been accepted by the Courts, for determining the form and proper content of byelaws. Obviously, a byelaw must not impose on private persons obligations or prohibitions beyond those which Parliament contemplated, when giving the byelaw-making power. Then, a byelaw must be certain in its terms ; it must, that is to say, give persons who have to obey it sufficient information of what they have to do, and its operation must not depend on the discretion of the local authority or local officials. It must be reasonable. It must be impartial as between one class of those affected and another ; for example, it must not impose restrictions on certain traders from which other traders in the same business are excused—unless there is some strong reason, as in some cases, where religion is involved, there has been held by the High Court to be good reason for giving in byelaws a special preference to Jews, as is commonly given in Acts of Parliament affecting traders. The Minister of Health will not confirm any byelaw which seems to him to conflict with these canons of validity ; he has stated that he does not consider it consistent with the duty of a confirming authority to let a byelaw come into force (when the cost and burden of contesting it would fall on private persons) if he is in doubt of its validity. On most of the subjects where he is the confirming authority for byelaws, the Minister of Health issues model series of byelaws, which are revised and reprinted at short intervals so as to be always up to date. The model byelaws

have no legal force of their own, being intended as a guide to the requirements which (in the absence of local objection or other special reason) the Minister may be expected to confirm, if proposed by a local authority. Nevertheless, the model byelaws embody the result of much research and practical experience, and can usefully be studied by others, as well as by the members and officials of local authorities who desire to make byelaws.[1]

In addition to the power of making byelaws, local authorities have, for a few limited purposes, powers of making regulations not requiring confirmation by a central authority, and also powers of making orders—some of which require confirmation and some do not—for dealing with particular occasions. These powers of making regulations or orders may, like the power of making byelaws, spring either from general legislation or from special local legislation, and it is not practicable to set them all out here. It may generally be said that in modern times Parliament has taken the view that powers of a legislative nature, by which local authorities shall bind the private citizen, ought to take the form of byelaws, so that the machinery of prior advertisement and deposit for inspection, and the safeguard of confirmation by a member of the central Government, can be applied.

[1] Space does not allow the enumeration of all subjects on which byelaws may be made. Byelaws which, up to 1946, were confirmable by the Minister of Health are listed in a memorandum (C.1.a) obtainable from the Ministry on application; the model series named therein can be bought separately from H.M. Stationery Office at varying prices.

[2] (page 81). An Order in Council of 1946 transferred this function from the Minister of Health to the Home Secretary, in respect of byelaws upon many subjects, as from 1st Jan. 1947. It may be assumed that the latter will be not less scrupulous to protect persons affected. (See page 82.)

PART II

FUNCTIONS OF LOCAL AUTHORITIES

INTRODUCTION

We pass to the actual work which local authorities do, for which they have the power of receiving money, which is explained in a previous chapter. The functions of local authorities are now so many, and so various, that it would be possible to catalogue them in many different ways. There are whole books devoted to the work of local authorities in connection with public health, others to their educational work, others again to housing and town planning, and so forth.

In a general book like this it is not feasible to do more than indicate the outlines and main headings, and it will be convenient to begin with public health, since a large number of the duties which local authorities perform fall under powers of the Public Health Act, 1936. That Act was a consolidating Act; it came into full force on October 1, 1937, and, although its main purpose is consolidation, it contains, either in words or substance, a great deal of new matter.

The main heads under which it falls may be classified as sewerage and drainage, sanitary conveniences, water supply, the removal of refuse, the prevention of nuisances, the control of offensive trades and smoke, the

protection of rivers and streams, with such miscellaneous matters as disposal of the dead, supervision of the sanitation of factories, shops, camping grounds, and lodging houses, and the prevention of and care for infectious disease.

Another important function of local authorities is the maintenance of highways, their protection from encroachment, and the administration of the law dealing with ribbon development.

Connected with this, but stretching far beyond it, is the subject of town planning. Here the local authorities who are concerned find themselves dealing with the means of access to property and with general amenities, as well as many ancillary or subsidiary matters.

Education has since 1944 been in the hands of the large local authorities, namely, the councils of counties and county boroughs, boroughs and urban districts having lost their former powers. It is now the most costly of the public services.

The administration of public assistance, which, as has been mentioned earlier in this book, was for almost a century carried on by separate authorities called boards of guardians, is now a function of the councils of counties and county boroughs, working through public assistance committees and assisted in the county areas by local committees known as guardians committees—a name conferred (as has been mentioned) by the Local Government Act, 1929 (the relevant provisions of which have now been reproduced in the Poor Law Act, 1930), for the purpose of providing a sentimental link with the old boards of guardians.

Local authorities also have miscellaneous and important functions in such matters as control of food and

drugs, of weights and measures, of the purity of gas where this is supplied by a company and not by the local authority, and in the provision of pleasure grounds, burial grounds, and public baths.

In addition to the services already mentioned, which are mainly carried out at the cost of the ratepayer with such help as the local authorities may get from Government grants, there is the group of services carried out by local authorities by way of trade. Although the generally accepted modern theory is that these trading services are to be regarded not merely as a source of revenue but at least equally as a means for providing public services, they do in fact, when properly conducted, bring revenue in aid of local rates.

Even in the nineteenth century, when hostility to what was called " Socialism " in a broad sense was much more widespread than it is to-day, local authorities could be found embarking on such enterprises as the provision of trams, gas works, water works, and electricity. The general Acts of Parliament under which services of this kind may be provided contemplate local authorities working side by side with companies, and from an early stage the more progressive or well-to-do authorities who were in a position (and thought it worth while) to promote special Acts of Parliament obtained extra powers for these purposes. There is no general rule indicating which services shall be performed by a local authority and which shall be left to private enterprise. In London trams were, until transferred to the London Passenger Transport Board, run by the London County Council, but omnibuses were in the hands of companies. London's water was in the hands of companies until the formation, in 1902, of the Metropolitan

Water Board, and in the London area has never been under the control of an elected local authority of the ordinary type. The supply of gas in London is entirely in the hands of companies, and the supply of electricity is partly in the hands of companies and partly in the hands of some of the Metropolitan Borough Councils.

In Birmingham, gas, water, electricity, trams, and omnibuses (except the through services which run to other towns) are in the hands of the City Council. On the other hand, water, which has been one of the services most commonly undertaken by local authorities, is in the densely populated areas adjoining Birmingham not in the hands of local authorities but in those of the South Staffordshire Water Works Company.

The decision whether services of this kind shall be in the hands of the local authority, or of a company working for the profit of its shareholders, has in short been everywhere taken upon grounds of local convenience rather than on any general principle.

In addition to these large trading services which are capable of providing important sources of income, there are others, such as markets, baths, the letting of pitches for games in public recreation grounds and playing fields, all of which make their contribution to local revenues, while in an increasing number of towns public slaughterhouses are provided, and butchers must use these slaughterhouses and pay a fee for doing so.

The revenues from services of this kind all pass through the local authority's accounts, and are subject to audit in the manner already described.

It is important to notice that the English system is that local authorities have no power to embark on any trading services without specific authority from Parlia-

ment. This rule springs from more sources than one in English legal thought. It has already been mentioned that, by the theory of the British constitution, the King has power to create a corporation by charter—that is to say, to confer on a number of persons a corporate personality which entitles them to act as if they were an individual. Such a corporation, unless restricted by its charter, has power to do anything which an individual may do, but it has also been mentioned that the power of a municipal corporation (though municipal corporations, that is, the corporations of boroughs, are still created by the King) is in effect limited, because it can only spend its money derived from rates in the manner which was laid down by Parliament when Parliament authorized the raising of those rates. And there are local authorities which, although corporations, are created not by charter from the King but by Act of Parliament, and these can do nothing except the things for which Parliament called them into existence. It may be mentioned that this same rule, limiting the capacity of corporate bodies, applies not merely to local authorities but to trading corporations such as railway companies and ordinary companies. All these, from time to time, have been prevented by the courts from doing things outside the instrument which called them into being. This doctrine of *ultra vires*, that is, that the courts will restrain a corporate body by injunction from any action in excess of its powers, has been reinforced by the distrust of experiments in socialism, and in the nineteenth century was greatly used to check even the least beginnings of municipal enterprise which had not been directly authorized by Parliament. The same process can be seen in the conflict between President

Roosevelt and the Supreme Court of the U.S.A., with this difference, that the Supreme Court can declare even a statute passed by Congress to be unconstitutional, and has a tendency to do so, when its nineteenth-century prejudices are offended, whereas an English court cannot prevent the exercise of powers once conferred by Parliament.

CHAPTER I

PUBLIC HEALTH

General

It is mentioned in an earlier chapter that the largest group of subjects with which local authorities are concerned is connected with preservation of the public health. Local authorities, as they now exist, have many other functions to perform, but public health functions are not only the most numerous but are fundamental. After remaining scattered about the statute book in hundreds of different Acts of Parliament, the Acts relating to the public health (the greater part of which confer powers and impose duties on local authorities) were in 1932 referred to a consolidation committee, on whose recommendation there was passed the Public Health Act, 1936. The Public Health Act, 1936, could not, however, cover all the ground. This was too vast; a further Report by the same committee dealt with the law of food, and a Bill giving effect to the committee's recommendations passed into law in 1938, but even now there are other branches of this subject to complete.

There are, moreover, a good many matters with which local authorities deal under the general heading of public health which yet are outside the scope of the Public Health Acts in the statutory sense. Among such

matters town and country planning may be mentioned, as may housing, much of which, regarded from one point of view, is a public health matter.

Drainage

In the present chapter it is proposed to deal with the main topics which are known to Parliament as those of public health. We may begin with sewers and sewage disposal, one of the earliest matters, historically speaking, with which local authorities as we now know them had to deal, and one of the first in order of sections in the Public Health Act, 1936. It is the duty of every town council, urban district council, or rural district council, to cause sufficient sewers to be made for the needs of their district. This does not mean that there must be a sewer available within reach of every building. Manifestly where buildings, dwelling-houses or others, are comparatively scattered, it is possible to dispose of sewage and other waste liquids without the expense of sewers. A sewer, it may be mentioned, is in the eye of the law a pipe serving to carry off waste liquids from two or more premises. Not by any means all sewers are provided in the first place by local authorities ; more often than not sewers are nowadays provided by persons laying out estates or erecting buildings, because unless these things are provided the property cannot as a matter of business be sold or let. Until 1937, when the Public Health Act, 1936, came into operation, the general position was that all sewers became automatically the property of the local authority when two or more buildings were connected to them, and the local au-

thority was responsible for maintaining them. The Public Health Act, 1936, laid it down that sewers constructed by private persons were not to become the property of the local authority until accepted by them, or upon appeal to the Minister of Health declared by him to be public sewers for which they should be held responsible. Where a sewer is in private ownership, it is, however, the responsibility of the local authority, just as it is their responsibility in regard to any other property, to ensure that it is maintained in such a way that it does not give rise to nuisance. In addition to public sewers and private sewers with which we have been dealing, drains are necessary for carrying sewage and other waste liquids away from buildings, and these, with certain exceptions, have to be provided for all buildings. One of the duties of local authorities is to see that drains are so provided, connecting with a sewer where there is one and otherwise with some other means of disposal.

Then again, to take the matter a step further back, it is the duty of every town council, urban district council, and rural district council to see that buildings for which closet accommodation is necessary are provided with it, as also with sinks, dustbins, and other conveniences which are considered in these days to be necessary to a healthy life. The Public Health Act, 1936, gives, as did earlier Public Health Acts, a variety of powers to local authorities for enforcing these minimum requirements, and there are parallel provisions in the Housing Act, 1936, which, like the Public Health Act, 1936, is a consolidating Act repeating earlier powers. The Town and Country Planning Act, 1932, may help in this direction, since one of the declared objects of that Act is to ensure the provision of proper sewers, and under it

local authorities have power to prevent the development of property where sewers are necessary, but the provision of sewers would be unduly expensive. Readers desirous of studying these various powers can find full information in works on public health, housing, and town planning. It may, in a general work like the present, be worth while to call attention to the variety of these powers, and to suggest that members of local authorities will do well to ensure, so far as lies in their power, co-ordination between different committees of the same authority which may be charged with duties under the different Acts. In the past one cause of inefficiency has been that public health committees, housing committees, and town planning committees, with the respective officials assigned to these branches of a local authority's work, were aloof from one another, almost in water-tight compartments. Town planning, in particular, has been regarded as a mystery which could only be understood by a special type of expert, who frequently had little comprehension of the close connection between planning problems and problems of housing and of public health. Even housing has, in the author's experience, frequently been found to be in charge of officials who were ignorant of parallel powers in the Public Health Acts, supplementing the powers of the Housing Acts which were their immediate concern.

Closely allied with the provision and maintenance of sewers is the topic of river pollution. In inland districts sewers, since they must somewhere have an outlet, must discharge directly or indirectly into rivers, and in the last quarter of last century, in particular, much litigation arose and great expense was incurred as the result of the pouring into rivers of town sewage. There is a special

group of Acts of Parliament dealing with this topic, and there are also provisions in the Public Health Act, 1936, itself. The general purpose and the effect of these is to preclude either local authorities or private persons from discharging sewage into rivers or natural streams until it has been treated so as to be harmless.

Scavenging

A problem similar to that of getting rid of waste liquids from buildings is that of preventing nuisance from accumulations of refuse. This again is one of the oldest duties of local authorities. Until recently the local officials who are now called " sanitary inspectors " bore the title " inspectors of nuisances," and the functions of public authorities of one kind or another in relation to nuisances go back far beyond the modern system of local government. Indeed they go back to a point in the Middle Ages when sewers and water supplies, as we now have them, were unknown except in those Italian and some few other cities where they had survived from Roman times. It must be one of the first considerations in any community to find means for preventing the householder or property owner on the one hand from letting his refuse accumulate in such a way as to be a nuisance to his neighbours, and on the other hand from disposing of it in such a way that he and his immediate neighbours shift the nuisance under some one else's nostrils. With changing habits the details of the problem alter. The problem itself must always remain. The disappearance of the horse, and the abandonment of the keeping of cattle and pigs in the

centre of towns, have got rid of one form of nuisance ; on the other hand, the tendency to get rid of coal fires has made it more difficult for the householder to dispose of scraps of food and other putrescible matter, while the enormous growth in the consumption of tinned foods, and sale of foodstuffs and other products wrapped in cartons, have meant new kinds of refuse for the scavenger. In the last generation the cost of disposing of common house refuse in towns has gone up by leaps and bounds. At the same time, interesting experiments have been taking place, and a valuable new technique has been evolved for dealing with these problems. Readers may remember periodical excitement in the newspapers over the disposal of London refuse, some of which is burned, while some is taken to sea and dumped, or is dumped in country places. The problem of disposing of London house refuse is complicated by the fact that there are some thirty different public authorities in the county of London alone, to say nothing of vast urban communities on its outskirts, whose opinions differ and whose practice varies regarding the disposal of their refuse. The London problem is, however, essentially the same as the problem of every urban community, and it is one which deserves much more attention than it has hitherto had from all but a few enlightened authorities.[1]

From the prevention of nuisances due to the natural accumulation of refuse, we may pass to the prevention of nuisances from trading processes. Every shop has a certain amount of refuse to get rid of, and in some manufactures the cost of disposing of refuse is a substantial proportion of a firm's expenditure. The scheme

[1] See "Public Cleansing," issued from the Ministry of Health in September, 1938 : H.M. Stationery Office, 1s. 6d.

of the Public Health Act is that local authorities are bound to dispose at the public expense of house refuse, but are not bound to dispose of trade refuse unless the trader pays them to do so. In some manufactures and other trades the trader can find a market for his refuse. In some trades the sale of waste products is indeed the factor which spells the difference between commercial success and commercial failure. In other trades, however, the trader is obliged to pay for the disposal of his waste, and since he can be compelled by the local authority to dispose of putrescible waste in such a manner as not to cause a nuisance, it commonly pays him to arrange with the local authority, who have the necessary plant and scavengers, to do it at his expense. Enterprising local authorities in industrial areas can in this way recoup themselves to some extent for the cost to which they, or rather their ratepayers, are put in disposing gratuitously of house refuse. This again is a side of the work of local authorities to which councillors might give more attention than they commonly do. It may not have the attraction of housing or town planning, or the provision of pleasure grounds or of other amenities, but it has a close bearing both on local finance and on public health.

The initial expense of dealing with house refuse must increase as compared with a generation ago. In the first place the public expects a higher standard, and is no longer content to keep house refuse in open heaps or even covered ashpits for a period of days or weeks. Secondly, the increase of urban aggregations means that there is less ground available in which the householder can dispose of his own refuse; and thirdly the population, which has to so great an extent since the war

spread out into suburban and semi-rural conditions of life, has taken with it an urban outlook; the householder, living under conditions it may be of four houses to the acre, still expects to have his refuse collected at short intervals by the local authority. Whether houses are spread out in this way in accordance with modern planning ideas, or are piled one on top of another in flats, the cost of haulage and handling refuse is increased out of proportion to the increase of the population. Much has been done by improved mechanical appliances to speed up this work and reduce the wages bill, but reductions are largely offset by the fact that the work must be done within a few hours after daybreak. There is here room for still greater ingenuity on the part of local authorities and their advisers in finding methods to reduce the cost of collecting and disposing of house refuse without impairing the standard of efficiency which the modern community expects.

Connected with the subject of the removal of house refuse is that of the cleansing of the streets. While the disappearance of the horse, already mentioned, has simplified the problem in one sense, the introduction of impervious road surfaces has intensified the problem in another direction, since liquids which formerly would have soaked into the ground have now to be carried off by drains and sewers of their own. All this means, of course, expense as well as the exercise of skill by those responsible. In some towns street cleansing is performed by the same staff, and under the supervision of the same chief official, as those who are responsible for collecting house refuse. Elsewhere there is a separate staff, and the position is complicated by the fact that public health authorities who are responsible for the house refuse

service, and indeed for the cleansing of the streets, are often not the highway authority, since control of highways has been transferred so largely in the last ten years to county councils. Here again the standard of efficiency attained and the methods pursued differ widely between one place and another. In many large towns the streets are constantly kept clear, both by sweeping in the day and by washing down at night. In other towns there is often little serious attempt at cleansing, except perhaps in the main shopping streets. A couple of generations ago, when the Public Health Act, 1875, was passed, it was contemplated that the scavenging of pavements would be done by householders, leaving only the carriage way to be kept clean by the local authority—a process which in those days consisted principally (where anything was done) of removing horse dung. Local authorities were even given power to make byelaws for imposing on householders the duty of cleansing their pavements throughout the year, and also of removing falls of snow. Such byelaws, however, have long proved unenforceable in practice. It might be possible to compel the occupiers of business premises in the central streets of towns to carry out this work, since their frontages are comparatively restricted in proportion to the value of the premises, and they are in a position to command the necessary labour. It is impossible to compel the ordinary householders to do it. Under modern conditions of development, houses in suburban roads normally have long frontages in proportion to their value, and suitable labour is not obtainable. The householder himself usually leaves early for business, and the cleansing of pavements cannot in practice be imposed on the women of the household.

In connection with the removal of house refuse, one minor point, which has some general interest, may be mentioned. It is fairly common practice in towns for householders to place their dustbins on the edge of the public footway so as to be convenient for the council's scavengers. This is obviously an enormous saving to the local authority, since, if the bins are some distance from the road, the workmen will take three or four times as long over moving each bin, and the wages bill will be increased. Local authorities have therefore, generally speaking, encouraged this placing of bins upon footways, and, round about the end of last century, it was not uncommon for them to propose byelaws requiring that this be done.

There is not much objection to the placing of the bins upon the public footpath for a short time on the days when collection is to take place, although the practice is unsightly and indeed, if the bins are not properly maintained, disgusting. It is, however, now well settled law that if the bins remain for longer than is strictly necessary for the purposes of facilitating the scavenger's work, they are illegal obstructions of the footway. Any person who tripped over a bin and suffered injury would have a claim to damages, and the local authority cannot, by making byelaws or in any other way, insist that the bins shall be placed in a position where they are illegal. Nowadays, therefore, the normal practice is for the local authority by their byelaws to require that the bins shall be placed in a position on the householder's premises which will be convenient to the scavenger—for example, just inside the front gate, or on the doorstep if there is no yard or garden in the front. In this way the workmen are saved the long tramp up the side or to the back

of the house, with consequent saving to the ratepayers, and if the collection is reasonably frequent the task of moving the bin from the house to a place on the premises convenient for the scavengers need not be unduly burdensome to the household. It should be mentioned that if the local authority fails to remove house refuse with reasonable frequency, a person whose refuse has not been removed may not only complain to the Minister of Health but he may prosecute the local authority in the police court.

Water Supply

Among the most important functions carried out by local authorities are those in relation to the supply of water, but the actual provision of public water supplies is by no means everywhere in the hands of the local authority. There are many important water undertakings carried on commercially by companies, and there are some, necessarily smaller undertakings, belonging to private persons. There is no legal provision which precludes a private person from establishing a water undertaking of his own or from forming a company to do so, so long as he does not enter territory which by a special Act of Parliament has been assigned to some other undertaking or to a local authority supplying water. In practice, however, it is found necessary for a substantial water undertaking to have numerous powers, for example, for the the breaking up of public highways, the compulsory purchase of land, and the recovery of charges from consumers, which can only be obtained by Act of Parliament, and thus it comes about that all

water undertakings of any size, whether in the hands of companies or local authorities, operate under statutory powers. Where the undertaking does not belong to the local authority, the local authority has duties for securing that a pure water supply is available, and where the undertaking does belong to the local authority it has additional obligations as the water undertaker. From time to time complaints are heard of the charges for supply of water, and it is not unknown for a suggestion to be made that water should be available without charge, on the principle that the rain falls on the just and the unjust ; that it is, in other words, a natural right. A moment's thought, however, will show that the water which any one could obtain from natural sources would be quite inadequate. It is estimated that in this country each person consumes on an average thirty-six gallons of fresh water per day, and in parts of the United States the average is much higher. A good deal of this is wasted, but we have come to regard this as inevitable. The process of bringing this water from the places in which nature has made it available to those where it is required is costly, and, in addition, it must be filtered or otherwise dealt with to secure its purity, and arrangements for its storage must be made so as to preserve as nearly as possible an even supply throughout the year. Occasionally trouble such as that which occurred at Croydon towards the end of 1937, and the evidence which comes to public notice in dry seasons, that particularly in densely populated areas the available supplies are still inadequate, is a reminder that the modern man's dependence on a public water supply is highly artificial.

Generally, however, we forget this, and town dwellers have come to think of the process of turning a tap and

obtaining water as a natural and simple thing, without which they could not exist. In fact, the engineering works and the supervision necessary on the part of public authorities or water undertakers are both complex and costly. The problem is made bigger by the growth of population, by its aggregation in certain centres, and not least by the steady annual increase in the demand for water, as such contrivances as baths and water-closets become almost universal. There is, moreover, the demand which every year is made for the requirements of the fire brigade and similar services, a demand already being increased by air raid precautions and bound to be increased further when the fire fighting services are brought up to date in accordance with the Fire Brigades Act, 1938.[1]

The scheme of the main Acts of Parliament by which the supply of water is controlled is that every inhabited house must have a supply of water from some source, and it is for the local authority to see that that source is the best procurable in the local circumstances. If a public supply is available within a reasonable distance, it is their duty to see that that supply is laid on to the house. Conversely, every householder is entitled on certain conditions to obtain a piped supply if this is available within a certain distance. The Acts provide that this supply for domestic purposes, including sanitation, shall be supplied to every house of whatever size and value, at a fixed rate. Water undertakers are entitled to charge on commercial terms for water supplied for other than domestic purposes.

[1] For this Act, which deals with some matters of water supply, see the note to the section on *Fire Brigades and Fire Protection*, in the later chapter headed "Some Miscellaneous Services."

Hospitals and Similar Services

A branch of public health work which has leapt into fresh importance in the last ten years is the provision of hospital accommodation. For generations it has been one of the duties of local authorities to provide isolation hospitals for infectious diseases. The local authorities of thickly populated or well-to-do areas may have done this single handed, and elsewhere such hospitals have been provided by combinations of local authorities, joint boards, or joint committees. It was, however, not regarded as part of the duty of local authorities, before 1929, to provide hospitals except for the isolation of infectious cases. For the reception and treatment of the sick poor the boards of guardians were responsible (see the heading " Public Assistance " below, for an account of the boards of guardians as poor law authorities, and the transfer of their functions in 1929 to the councils of counties and county boroughs). One object of this transfer was that the infirmaries formerly maintained under the poor law by boards of guardians should become available for wider uses. The Local Government Act, 1929, while not interfering with the voluntary hospitals, which are maintained by charity, contemplated closer co-operation between those hospitals and the former poor law infirmaries, and at the present day the work is almost complete of transforming the poor law infirmary into a municipal or county hospital, working side by side with the voluntary hospitals. It will probably be many years before the public at large realize this change, and it may be a long

time before those features which used to be held to constitute the "poor law taint" are swept away in all districts.

The Act of 1929 has, however, established it as one of the duties of county councils and county borough councils to maintain hospital accommodation for all persons who require it, so far as such accommodation is not provided by voluntary agencies.

Maternity and Allied Services

Apart from the provision of hospital accommodation, that is to say of wards with beds in which sick persons can be received, the councils of counties and county boroughs and some other local authorities have for many years, and increasingly since the Local Government Act, 1929, provided maternity and child welfare services, while under the Midwives Act, 1936, they are also bound to provide the services of trained midwives. They also provide in all areas facilities for the gratuitous and confidential treatment of persons suffering from venereal disease.

These are services which have developed almost entirely within the past twenty-five years, and their importance is becoming more and more realized as attention is drawn to the declining birth-rate. It provides an illustration of what is mentioned in a later chapter—that local authorities find themselves engaged upon new duties, the impetus for which has sprung from voluntary societies and from the central Government, which is more susceptible to the public demand for new services than the general run of local authorities can be. Some

local authorities may be ahead of the central Government, but it was only after the Local Government Board, in 1914, published a memorandum on ante-natal care, and a report on maternal mortality in 1915, that the service began to take shape. Now, these services conducted by local authorities comprise maternity and child welfare centres, ante-natal care, educational work for parents of both sexes, post-natal care and health visiting, home help, and maternity hospitals, with, in some few places, convalescent homes for mothers, while nursery schools forming part of the educational system carry on the work.

Mental Treatment

A problem which in all ages has faced persons in authority is the control of the mentally afflicted, from the two points of view of protecting the community at large from any danger they may cause, and securing that they themselves have proper care—according to whatever standard is thought proper from generation to generation. In the earliest English literature we find both maniacs and idiots. No doubt filial or family instincts in those days, not less than in the modern world, would prompt people to take care of members of their own families whose minds were unhinged, but this was, until comparatively recent times, not regarded as a matter for the State or other public authorities. It was for the relatives of the afflicted person, or for charity or for religious bodies. The attention of public authorities was first directed to the mentally afflicted from the point of view of protecting others. There is no complete

information as to the extent to which public authorities attended to this matter in the early days of local government—say, at the time of the Elizabethan poor law. The general duty imposed on the parochial authorities, by the statute of Elizabeth which has been already mentioned, extended to the feeble-minded as well as to others of the sick poor. The first Act of Parliament dealing with the matter was not, however, passed until 1743. This provided for locking up dangerous lunatics in some secure place, and with the consent of the magistrates they might be chained. They might be put in a workhouse where this existed, in the house of correction, or even, if they were dangerous, in the common jail. More than half a century later, in 1808, the county magistrates, who, it will be remembered from an earlier chapter, were the local government authority outside the corporate towns of that epoch, were empowered by Act of Parliament to establish county lunatic asylums as separate institutions for mental cases. In passing, it is of some interest to note that in these, as in other fields of local government, words change their meaning. The word " asylum " when first adopted into English bore the meaning of a place of refuge. In literature, especially in poetry, it bears this meaning still, but in common speech it has become appropriated to a place in which lunatics may be confined, and in this context attracted opprobrium which led to its being expunged by Act of Parliament (the Mental Treatment Act, 1930) from the official English language. The word " lunatic," used in the foregoing sentences, has had a similar history. Adopted first as a euphemism (it means no more than moonstruck) for the older English " maniac," this word too attained opprobrium

which led to the forbidding of its use by the Act of 1930.[1]

From 1808 to 1845 the only general provision for asylums was that which has been mentioned. In 1845 it was made obligatory for the local authorities of that day to provide for all persons certified as of unsound mind and unable to pay for the necessary care. It is evident that, in the second half of the nineteenth century, the public conscience was becoming more and more concerned upon this topic, for there were numerous inquiries by committees of Parliament. Their investigations led to the passing of the Lunacy Act, 1890, which, although a good deal altered by later legislation, is the foundation of the present system. This Act is of interest from the point of view of general local government, in that it was the first statute of major importance passed after county councils had come into existence by the Local Government Act, 1888, and the first which placed distinctive duties upon those newly constituted bodies in the sphere of what is now recognized as public health, to the exclusion of smaller local authorities within the county area—even of the councils of boroughs which are not county boroughs. The Act of 1890 provided that the authority for maintaining asylums should be the council of the county or the county borough, and that accommodation must be provided for all persons of unsound mind who are not in a position to maintain themselves, or whose families cannot maintain them elsewhere. In practice a large proportion at any rate of persons of unsound mind

[1] Except in relation to criminal lunatics and (a delightful touch of unintended statutory humour) persons confined in asylums outside England and Wales.

are maintained in these public institutions at the cost of their families, even though the latter could afford to maintain them in some other place. The Act of 1890 called for the establishment of visiting committees, which were given semi-independent status once they had been established by the local authorities above mentioned, and had the general supervision of asylums. Provision was made in the Act of 1890 for the certifying of lunatics by justices upon the advice of qualified medical practitioners; the Act bears on the face of it the anxiety of its framers, that persons who are not of unsound mind shall not be wrongfully confined, and it is hardly too much to say that this important aspect of the matter was at least as much in the mind of Parliament as the other aspects, namely, those of protecting the community against dangerous lunatics, and of caring for, and if possible curing, the lunatic himself.

While the Act of 1890 marked a great advance in the direction of co-ordinating the law, and indeed of providing for the care and treatment of the mentally afflicted, it was recognized by those who gave attention to the problem that much more might usefully be done. The Act was, broadly speaking, based upon the view that a person was either a lunatic or sane. It is true that, even in 1890 and for many years previously (one might say even in the time of Shakespeare), it was well known that there were classes of persons of unsound mind who were not lunatics—the village idiot was a familiar figure, and older readers of this book will probably remember in their own villages or towns well-known local characters who were notoriously "not all there," but were never considered to be certifiable as lunatics, and re-

mained in the care of friends or even took part in earning their own living.

Apart from these harmless cases at one end of the scale, and at the other end of the scale from the lunatic who might be dangerous to himself or others, it has for a generation or more been increasingly recognized that there are border-line cases. Some of these, now elderly or middle-aged, have spent their lives going into asylums for treatment and coming out again for spells of liberty. There are also cases, increasingly recognized by the legal and medical professions, where persons are liable to impulses which they find it difficult or impossible to control, in some of which cases at any rate prompt treatment, not necessarily in an asylum, may re-establish the balance of the mind. As the result of increased attention given to the matter in the early years of the present century, there was passed the Mental Deficiency Act, 1913, which conferred further powers upon councils of counties and county boroughs for the supervision and treatment of mentally afflicted persons who were not certifiable as lunatics.

The next step in this history involves turning back for a moment to the central authorities. From the earliest days one of the functions of the Lord Chancellor has been the care of lunatics, especially their property. This sprang from the Lord Chancellor's function as keeper of the King's conscience; he was one of the King's chaplains or spiritual advisers, who acquired the special function of guarding the interests of those who, by reason of weak intellect, were proper subjects for the King's paternal care. The Lord Chancellor had, however, no staff or machinery at his disposal for doing more than look after property, in much the same way

as he looked after the property of persons under twenty-one who were made his wards. When the system of county asylums was set up, the Home Secretary, as the Minister of the Crown who attended to matters not assigned to any other Minister, naturally stepped into the position of looking after the asylums and general administration of the lunacy laws. Under the Lunacy Act, 1890, the Home Secretary's functions were delegated to a body of Lunacy Commissioners appointed by him, and after the Mental Deficiency Act, 1913, the Lunacy Commission was merged in a larger body known as "The Board of Control for Purposes of the Mental Deficiency Acts." The next step forward was taken by the chairman of this board in January 1922, when he called a conference on lunacy administration. This conference passed resolutions in favour of greater facilities for treating persons of unsound mind without their being certified as lunatics, and for co-operation between different authorities for research. Recommendations for conducting institutions for those of unsound mind were made, along the general lines of preferring treatment to confinement. In 1924 a Royal Commission was appointed to examine the state of the law relating to lunacy and mental disorder, and their recommendations, made in 1926, are the basis of the present law. The Royal Commission recommended that general supervision over the Board of Control should be transferred to the Minister of Health, thus recognizing that the problem was essentially one of public health.

The recommendations of the Royal Commission were embodied in the Mental Treatment Act, 1930, and the position now is that the council of every county or county borough must provide accommodation for

persons of unsound mind who require assistance from public funds, and must appoint a special committee for the purpose which may include co-opted members who have knowledge and experience of the problems involved.

The councils of counties or county boroughs may be combined in joint committees or joint boards, and in some cases this has been done on a large scale. In Lancashire, for example, there is a Mental Hospital Board for the county and the numerous county boroughs within its boundaries.

The Act of 1930 provides that a person may voluntarily submit himself for treatment for mental illness in a public institution, and in certain cases his relatives or friends may be lodged there with him. Temporary treatment may be given without certification as of unsound mind.

The same local authorities have also a duty to provide accommodation and supervision for those who are mentally deficient in various degrees, including those found guilty of some offences, habitual drunkards who are mentally deficient, and defectives generally. If such persons are not properly cared for by their families or friends it becomes the duty of the local authority to send them to an institution or make provision for their guardianship.

Public Assistance

In every civilized community some provision must be made for relieving the necessities of those who from permanent or temporary causes are unable to provide for themselves or obtain support from their friends. It

is only in the most undeveloped forms of human society that such persons are left to starve. For many centuries, however, the task of relieving them was left to private benevolence or to the Church. Indeed, throughout the Middle Ages it would have been regarded as a normal function of the Church to provide for the sick or homeless poor, or others who could not provide for themselves, while the Church also preached and to a great extent was able to enforce the duty of almsgiving, so as to ensure that the well-to-do contributed. With the dissolution of monasteries and other pious foundations under Henry VIII., the problem of the poor was forced on the attention of the central Government, as well as of such local authorities as then existed. It is on record also that in the reigns of Henry VIII. and his successors there occurred a series of bad harvests, while the discovery of the New World led to a change in the value of money (which indeed had consequences far beyond our present subject, and may be said to be one of the principal causes of the Civil War under Charles I.). These various causes created a problem, which was met by legislation in the reigns of Henry VIII. and Edward VI., and finally by what is always called in this connection the Statute of Elizabeth, passed in 1601. The word "finally" may appropriately be used, although the Act of 1601 has been repealed within the last few years, because the foundations then laid, of public care for the poor, are still the foundations of the English system, and it is hardly too much to say of the whole of English local government. The object was not merely humane; the practical common sense of the Tudor period saw the dangers which would follow if the poor took to a life of vagabondage. It was recognized that mere doles would

be demoralizing, and accordingly in each parish overseers of the poor were to be appointed by the justices, and were to raise a stock of goods for setting the poor to work, and to put out poor children as apprentices, as well as to furnish relief in other forms for those who needed it.

In connection with this work it is noteworthy that the churchwardens of every parish were to be among the overseers, the remainder of whom were to be substantial householders chosen by the justices. Each parish was to maintain its own poor, and by this and subsequent Acts it was provided that a person who received relief in a parish other than his own might be sent back where he belonged. With rare exceptions, everybody was "settled" in some parish, and in course of time, by decisions of the courts and by further Acts of Parliament, a code of law was evolved under which persons in receipt of relief might in some cases be sent, and in other cases might not be sent, to their place of origin. It might involve hardship to remove families from the place in which they had gone to live, and had acquired ties of business or friendship, and a series of Acts of Parliament accordingly conferred a right to "irremovability." With the widening of the area of charge, first from the parish to the union, and then under the Local Government Act, 1929, from the union to the county, all this about settlement and removal became less important. The wide area of the county is better able to bear the charge than was the original small area of the parish, or even the union of parishes; on the other hand, a change of residence, from one parish to another within the same county, no longer destroys the benefit of a "status of irremovability." Accordingly it is only when a person has moved from one county or county

borough to another that it remains important, from the point of view of the public authority which has become liable for giving poor relief, to determine what is the place of settlement of the person concerned, or whether he has a status of irremovability.

The first widening of the area for the cost of poor relief, of which we have just spoken, came with the industrial system and the Napoleonic wars. The change was hastened by the fact that the magistrates, who ever since the Statute of Elizabeth had had supervisory powers over the poor law authorities, had over large parts of the country taken to ordering poor relief to be given to men who were able to work. The praiseworthy intention of the magistrates was to ensure a living wage for labourers, but the result was that employers found it possible to reduce wages still further, knowing that the labourer would be maintained at the cost of the whole body of ratepayers. These reasons led in the first place to the grouping of parishes in unions from 1782 onwards until, as the result of a Royal Commission appointed in 1832, a new Poor Law Amendment Act was passed in 1834. This Act is the second great milestone in the history of legislative provision for relief of the poor. The Act was passed under the auspices of the Whigs, and was deeply suspected by the Tories, and unpopular with large sections of the population, but it erected on the Tudor foundations something like the modern system of local government. A central department of government was formed, with supervisory functions, which in due course were transferred to the Local Government Board at its creation in 1871 and passed, in 1919, to the Minister of Health. Locally, the system of uniting parishes under boards of guardians

was made general (not quite universal, for some large single parishes survived), and the Elizabethan requirement, that the poor who were able to work should be set to work, was in effect given new statutory force by the Act of 1834. Workhouses were to be erected by the boards of guardians, and persons able to work were not to be given relief outside the workhouse; this drastic provision being intended to prevent any further use of the poor rate as an encouragement to low wages. For persons unable to work, however, for women unable to leave their children, for the aged and the sick, relief outside the workhouse might be given, either in money, or in the form of goods, or in orders upon tradesmen. With these comparatively simple beginnings, and with provision for boarding out and educating poor children, the poor law was recast in the period of Whig and Liberal ascendancy. It was in that epoch that the deterrent aspect of the work of boards of guardians and their officials, which looms so large in modern thought, came to be stressed. The guardians were to see that maintenance at the public expense, through the poor law, did not become more attractive than self help in the world of competitive industry.

The central department was, through its inspectors, to see that boards of guardians carried out their functions, but was forbidden by the Act of 1834 to direct the granting of relief in particular cases. This was undoubtedly a wise provision, to prevent political or similar influence from being brought to bear upon the Minister in charge of a department. It is also of interest to note that the system of district audit, by auditors centrally appointed, came into existence originally as part of the poor law as it was remodelled in 1834.

As the nineteenth century went on, and the needs of the poorer classes of the community came to be more fully understood, the conception of the duties of boards of guardians was widened. Workhouses themselves were improved. Workhouse infirmaries turned into a species of hospitals, with proper medical and nursing staffs, and provision was made for boarding out the children of poor persons so that, even if it was necessary for the parents to remain in the workhouse through inability to maintain themselves outside, the children should mix with other children and be sent to ordinary schools. It was not to be expected that equal progress in all unions would be made, since from the first the essential feature was local administration by elected persons, the poor law commissioners (and the Local Government Board when it came into existence) having no more than supervising powers.

Partly because the ideas which had been prevalent in 1834 went out of fashion, until the receipt of relief largely ceased to be regarded as a thing of which to be ashamed, partly by reason of the growth of a feeling among the poor themselves that something more human and humane was called for, the poor law administration gradually became unpopular at the very time when it was being by successive steps improved. Round about the end of the nineteenth century a demand for reform grew up, which was crystallized in the phrase "the break-up of the poor law," the idea being that looking after poor law children was the business of the education authorities, that looking after the sick poor was the business of the public health authority, and that the relief of the able-bodied unemployed was the business of the State and not of particular local authorities.

Broadly speaking, it may be said that this break up of the poor law was effected by the Local Government Act, 1929, when boards of guardians ceased to exist and their functions were merged with those of councils of counties and county boroughs, the councils of counties acting through public assistance committees and the local "guardians committees" already mentioned. It is, however, found in practice that the process is not quite so simple ; that poor relief cannot be broken up without leaving a residuary problem, of those who are not within the special province of any other authority. There are still persons for whom no public or private provision is made in any other way, and who must accordingly receive relief from public funds specially existing for the purpose. It is, however, fair to say that the sphere of public assistance (as it is now called) in the narrower sense, and as distinct from the spheres of health, education, and so forth, is all the time diminishing, as new means are found for dealing with special aspects of the problem. The greatest single advance in this direction has been the setting up of the Unemployment Assistance Board in connection with the Ministry of Labour, which board is charged with the granting of relief to the able-bodied poor. This method of dealing with them arose from unemployment insurance. The national system of insurance against unemployment was instituted by the Insurance Act, 1911, at the same time as health insurance. The number of trades in which insurance of workers against unemployment was compulsory was limited, but the list was increased from time to time. After the war of 1914–18 it came to include a large part of the working population, and it was also found necessary to continue insurance payments in many cases

of unemployment, after the period for which unemployment pay was claimable under the Acts of Parliament. It was these payments, continued as a matter of policy by Parliament to persons who had exhausted their right to insurance, which received from the newspapers the popular name of " the dole," which name afterwards came to be frequently extended to payments regularly due for insurance for which the workman and his employer had paid premiums. In the course of years, after several spells of unemployment, it became necessary to reorganize the system, since it was evident that the overpayments above mentioned would never be recovered. The result was a complete change in the public relief of the able-bodied, the merger of the old unemployment insurance payments with the still older out-relief where the able-bodied poor were concerned. Speaking broadly, therefore, local authorities are no longer concerned (or are ceasing to be concerned) in the ordinary way with relief to able-bodied persons, which has become a matter of Government responsibility, although they may become concerned with such persons if they require additional help through accident or illness.

Miscellaneous Health Services

Under this heading may be grouped several aspects of the work of local authorities—some new, some old. Organized public care of the blind, apart from the old poor law, was originated by the Local Government Board just before the war. It received an impetus through the need of providing for blind ex-service men.

Special provision for tuberculosis was one of the

features which gained support for the Insurance Act, 1911, and the development of this service by the Local Government Board and the local authorities entrusted with the duty provided experience for large-scale " grant aided " services.

Vaccination, long a function of the poor law authorities (though an excrescence on their functions, since it had no necessary connection with poor relief, but was entrusted to them as being the only local authority available), is now under the charge of the ordinary public health authorities.

The supervision of canal boats, of hop pickers and fruit pickers, of tents, vans, sheds, and similar structures used for human habitation, and of camping grounds, are among the matters for which the Public Health Act, 1936, provides. Of these the last named alone is new, the others having been provided for by Acts of Parliament passed at intervals since 1875.

CHAPTER II

HOUSING

THE housing of the working classes is among the most important subjects entrusted to the supervision of local authorities, and one of those which possesses the greatest human interest. The history of the matter begins with the philanthropic movement in the mid-Victorian period, associated particularly with the name of the Earl of Shaftesbury, after whom Shaftesbury Avenue, London, is named, and whose memorial is the Eros Fountain at Piccadilly Circus. His influence led to the passing, in 1851, of the Common Lodging Houses Act and the Labouring Classes Lodging Houses Act. The former of these dealt with the registration, regulation, inspection, and cleansing of common lodging houses, that is, premises in which persons who are strangers to one another are received as lodgers for short periods. The second of these Acts of 1851 empowered the council of any borough and any local board of health (see page 13) to adopt the provisions in the Act, and, having done so, to borrow money for the erection, purchase, or lease of lodging houses for the working classes. Even before 1851 there had been Acts, which are the originals of the modern Public Health Acts, such as the Nuisances Removal and Diseases Prevention Acts of 1848 and 1849, the Public Health Act, 1848, followed by the Local

Government Act, 1858, and the Sanitary Act, 1866. These Acts were not confined in their operation to housing for the working classes, just as the modern Public Health Acts equally apply to all houses and many other forms of property, where it is necessary in the general interest to provide for the removal of nuisances and the taking of precautions against disease. At the same time it is evident that it is working-class housing which stands most in need of supervision from a sanitary point of view, both because the small rent which can be derived from such property may lead to the skimping of capital expenditure in its erection, and of expenditure upon repairs, and because, speaking broadly, members of the working classes individually are not in as good a position as the well-to-do to protect themselves, and thus need more protection from public authorities. The existence side by side of the Public Health Act system, and the system of legislation dealing specifically with the housing of the working classes, has long caused and still causes some confusion respecting the powers under which local authorities can most appropriately act. In many places the action of local authorities has been weakened by rivalry, between different committees and different sets of officials charged with functions under these respective legislative systems, and it may be doubted whether even at the present day the fullest co-operation is assured for the purpose of securing that the local authority makes use in each case of the most appropriate powers.

In 1871 the Local Government Board was created, and in 1874 and 1875 the Sanitary Laws Amendment Act and the Public Health Act, 1875, respectively gave further powers in those spheres of public health that are

most closely related to the housing of the working classes.

Housing legislation, in the narrower sense, was resumed in the sixties of last century, and in 1868 the Artizans and Labourers Dwellings Act (often known at the time—though the Act and the name are now forgotten—as Torrens's Act) gave to the local authorities then existing some of the powers as to insanitary buildings which are to be found reproduced in Part II. of the Housing Act, 1936.

In 1875, the same year as the above-mentioned Public Health Act, and in 1879, Sir Richard Cross, the then Home Secretary, was responsible for Acts known as the Artizans and Labourers Dwellings Improvement Acts. Whereas Torrens's Act assumed that houses unfit for human habitation ought not to be used as dwellings but ought to be closed and demolished, Sir Richard Cross's Acts proceeded on the principle of dealing not only with unfit houses but with whole areas. The scheme of these Acts was to deal with an area where the houses were so structurally defective as to be incapable of repair, and so ill-placed with reference to each other as to require demolition and reconstruction, and local authorities were given compulsory powers of purchase with a view to expropriation of the owners and re-erection of dwellings of a better type. The last-mentioned Acts were in substance the origin of what is now Part III. of the Housing Act, 1936. The Housing of the Working Classes Act, 1890, consolidated earlier legislation, and remained as the principal Act upon the subject until a new consolidation was effected in 1925. In 1899 there was passed the Small Dwellings Acquisition Act, which empowered local authorities to make advances to resi-

dents within their areas who wished to purchase their own houses. This Act, with amendments, is still in force, and although the degree in which it has been used differs widely in different places (according to the enthusiasm of local officials and local housing committees), it does enable householders who are in a position to find some small capital to become house owners with the aid of public funds, much as persons with slightly larger capital commonly seek the help of a building society. The Housing of the Working Classes Act, 1890, was amended in 1900, 1903, and 1909 before the war, the last-mentioned amendment being by the Housing, Town Planning, &c., Act, 1909, which will be subsequently mentioned in this book as the first statutory provision in England for town planning.

During the war of 1914–18 the erection of houses, both by local authorities and by private enterprise, was unavoidably suspended. After the war an actual shortage, coupled with a keener public conscience on the subject of the minimum requirements for decent living, brought housing into the political arena more prominently than it had ever been before, and led to numerous fresh Housing Acts beginning with the Housing, Town Planning, &c., Act, 1919, associated with the name of Dr. Addison. The basis of this Act was substantially increased payment out of public funds for the provision of houses for the working classes, and the subsidy, as it was called, for housing them was varied by the Housing, &c., Act, 1923, and the Housing (Financial Provisions) Act, 1924. It is not necessary to discuss the differences between the subsidy schemes favoured by the Coalition Government, of which Dr. Addison was a member, the Labour Government, in which Mr. Wheatley was

Minister of Health, and the Conservative Government, in which the Minister of Health was Mr. Neville Chamberlain. Those years were a period of repeated experiment and, at first, of soaring costs, which inevitably left a legacy of heavy charges to be met by way of interest out of public funds, followed by a fall in prices and the gradual revival of private enterprise in building.

When Mr. Arthur Greenwood was Minister of Health in the Labour Government of 1930 a further Housing Act substantially modified the law (which meanwhile, as above mentioned, had been consolidated in the Housing Act, 1925), particularly with respect to the clearance and treatment of unhealthy areas and the repair and demolition of insanitary dwellings.

In 1933 the Housing (Financial Provisions) Act brought to an end the granting of new subsidies for housing, and in 1935 the Housing Act of that year made numerous improvements not dealt with in the earlier Acts.

While the Act of 1930 had been largely directed to the clearance of the slums, the most important new feature of the Act of 1935 was an attempt to remove overcrowding, in houses which themselves might not call for demolition or substantial alteration but were unwholesome because they held too many inmates.

Ever since the Public Health Act, 1875, and indeed before, local authorities had had power to make byelaws with respect to houses occupied by members of more than one family, for the purpose of improving their sanitary condition and abating overcrowding. Such byelaws had, in fact, been made in most towns under the Act of 1875, which in this respect was amended and extended by the above-mentioned Act of 1919. The extent, however, to which those byelaws, where they

existed, were enforced by the local authorities differed widely, and there was a general feeling among those who had interested themselves in working-class housing that better results were to be secured by the fixing of a national standard. The Housing Act, 1935, accordingly carried into the statute law a standard based on that previously occurring in the model byelaws issued by the Local Government Board and the Minister of Health, which standard it became the duty of all local authorities to enforce as regards all houses occupied by or of a type suitable for occupation by members of the working classes.

The Act of 1935, with a large part of the earlier Housing Acts, will now be found consolidated in the Housing Act, 1936.

The general scheme of the Act of 1936 and of those parts of the earlier Housing Acts which have not yet been repealed is this :

On the letting for human habitation of houses below a certain rental value, a condition is implied that the house is at the beginning of the tenancy, and will be kept by the landlord during the tenancy, reasonably fit for human habitation. The effect of this implied condition is that the tenant can sue his landlord for damages if the house is found to be unfit and he suffers injury from this fact. Byelaws can be made for securing that working-class houses are fit for human habitation, and in certain circumstances local authorities may make advances for the carrying out of repairs to houses. New back-to-back houses are illegal. Local authorities have a duty to inspect their district from time to time with a view to ascertaining whether any house therein is unfit for habitation, and where areas are cleared, as being generally

in need of demolition and reconstruction, the Minister of Health may give directions for compensating landlords in the area who have kept their property in order.

Local authorities may require the repair of unfit houses and their demolition if not capable of repair at reasonable cost. They may also acquire houses for the purpose of reconditioning and making them fit for habitation by the working classes.

They may require the demolition of obstructive buildings, that is, those which even though themselves not unfit for habitation are dangerous or injurious to health by reason of contact with or proximity to other buildings. They may clear whole areas and purchase the land compulsorily, the payments to the owner being related to the condition of the houses.

Finally, they may purchase land for redevelopment, and on that land or on other land purchased for the purpose may themselves provide houses for the working classes, while special provision is made in the Housing (Rural Workers) Acts for government grants to recondition country cottages.[1]

The housing operations of local authorities are under the general supervision of the Minister of Health, and where private rights are involved the Housing Act, 1936, makes, broadly speaking, provision for recourse to the ordinary courts of law. Of course members of local authorities and others who may read this book will, if housing is the topic in which they are interested (if, for example, they find themselves appointed to the housing

[1] A booklet called *New Homes for Old*, issued in September 1938 from the Ministry of Health, gives a popular account of these Acts. It was supplied in bulk to county councils and rural district councils, and any reader of this book in a rural area should apply to one of those councils for a free copy of the booklet.

committee of a local authority), require much fuller information than can here be given. This they will obtain from the local officials, from standard textbooks on the subject, and from the circulars and memoranda issued from the Ministry of Health.[1]

It is not yet possible (March 1947) to see what will come of housing plans made at the end of the Second World War. The historical portion of this chapter seems to be very remote, but may be found to have importance by way of example or warning.

[1] Particular attention may be drawn to a report called *The Management of Municipal Housing Estates*, presented to the Minister by the Central Housing Advisory Committee in 1938, and published in October 1938 by H.M. Stationery Office, price 9d.

CHAPTER III

TOWN PLANNING

AMONG topics which have come to the front in recent years, that of town and country planning has attracted particular attention.

It seems as though in every generation there tends to be a subject in which the public mind is peculiarly interested. In the early Victorian period it was what was called " the condition of the people," as shown by novels such as Disraeli's *Sybil* and Charles Kingsley's *Alton Locke*.

Later, sanitation came into prominence, and at a public banquet in the seventies Disraeli epigrammatically summed up the prevailing interest of the moment by altering the saying of the Preacher, " Vanity of vanities; all is vanity " to " Sanitas sanitatum, omnia sanitas est."

Towards the end of last century the housing of the working classes obtained prominence, and in the present century " amenity " has become a catchword. The modern planning law, the creation of the twentieth century, deals, however, with other matters besides amenities in the ordinary sense. The Housing, Town Planning, &c., Act, 1909, marked the beginning of the legislation dealing with this subject. Local authorities were empowered to make " town planning schemes," affecting any land which is in course of development or

appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience, in connection with the laying out and use of the land and of neighbouring lands. The principle behind this power was to regard the lands of individual owners not as isolated plots but as parts of a whole. Obvious examples are the safeguarding of residential districts against the intrusion of factories, and the setting apart of areas for industrial buildings in which it shall not be lawful to erect dwellings, such as under the previous law had often been built in the shadow and smoke of the factories where their occupants were employed. It will be seen that the wording of the Act of 1909 was in some respects extremely wide. No limit was set to the meaning of "convenience," though here again there were certain obvious things such as provision for roads, railway stations, and aerodromes which would need to be considered. The Act of 1909 did not, however, it will have been noticed, apply to any land which was not in course of development or likely to be used for building purposes. It followed that country areas where there was little or no building might be left without planning in regard to roads, railways, and the like which traverse them, and that land already developed in urban areas was outside the scope of planning schemes.

The Act of 1909 was moreover experimental, and the machinery designed for safeguarding local authorities on the one hand and property owners on the other proved cumbersome in practice. It would not accord with ordinary English ideas that property owners should be deprived of their property, or have it reduced in value, without full notice in advance and an opportunity of making objections, or without adequate compensation

if, notwithstanding their objections, they were proved to suffer loss. These principles of prior notice and subsequent compensation have been retained in the latest legislation, but it has been found possible to modify the procedure so that planning schemes may come into effect more rapidly.

Ten years later, the Housing, Town Planning, &c., Act, 1919, increased the powers of local authorities for making schemes, and removed the necessity which had been imposed by the Act of 1909 of laying them before Parliament before they came into effect. It may here be mentioned that the present Act on the subject (the Town and Country Planning Act, 1932) has restored the necessity for laying planning schemes before Parliament, but that in other respects the procedure has been further simplified.

The town planning provisions of the two above-mentioned Acts of 1909 and 1919 were re-enacted in consolidated form by the Town Planning Act, 1925, and thenceforward town planning has pursued its statutory course as a separate topic, independently of the housing of the working classes to which it was linked in the first two Acts. This separation is logically grounded, for the planning of a district properly conceived comprises many matters besides the housing of the working classes. So far, however, as we have gone, planning was still "town planning," that is to say, it could not be applied to areas which were not in course of development or likely to be used for building purposes, nor could it apply to areas already built. County councils obtained concurrent power with other local authorities for the making of town planning schemes by the Local Government Act, 1929, as the corollary of the transfer to them

(to be subsequently mentioned) of certain highway powers.

The Town and Country Planning Act, 1932, marked a new departure. County councils obtained a much more prominent position, and the Act promoted the planning both of areas already built and of land not likely to be built on or otherwise developed. It is true that this extension of the planning power is subject to qualifications in the Act, but with all these qualifications it may indeed be said that the Act of 1932 is applicable to all land in England and Wales, while there is a separate Town and Country Planning (Scotland) Act, 1932, in the same terms. Since 1932 there has been no further Act of Parliament dealing in so many words with planning, although there have inevitably been the regulations of the Minister of Health made under the Act of 1932 for bringing the law into effect.

In 1935 there was passed another Act which is closely associated with town and country planning, namely the Restriction of Ribbon Development Act, 1935. Logically it may be said that this Act forms part of the planning code, but its procedure is very largely different, and it was designed chiefly for restricting that type of development which takes the form of building along main roads in places where more economical and satisfactory development would be the laying out of estates with their own roads, avoiding the interference with through traffic which follows where many small buildings are erected alongside a main traffic artery or other road of real importance.

In London both the City Corporation and the London County Council are planning authorities. Elsewhere in England and Wales the planning authorities are primarily

the councils of boroughs, urban districts, and rural districts, but any local authority which is not the council of a county borough may relinquish its powers to the county council, and (elsewhere than in county boroughs) when planning schemes are made by local authorities who are not county councils, the county council has a right to come into any joint committee formed for the purpose. The machinery for consultation between different local authorities, and for the association with planning schemes of county councils, is complicated and need not be set out. The general principle is recognized in the Act, and in practice, that the area of a single local authority may not be suitable for planning. Often a better plan can be secured by associating local authorities throughout a region which has common characteristics, or by dividing the area of a local authority where the characteristics of different parts of an area are markedly different. Traffic facilities have already been mentioned among the proper objects of planning.

A scheme may also assist building owners desirous of developing on proper lines, by determining the lines of roads or sewers, and there is power under the Act of 1932 for local authorities to purchase land suitable for development, and to resell it to persons who are in a position to develop it better than the former owners. Schemes may also provide for the preservation of objects of historical or artistic interest, whether in town or country, and for protecting natural scenery against spoliation or encroachment.

It will be realized from what has been said above about the compensation provisions of the Act, that the crux of all planning is finance. The Act provides that persons whose property is benefited by a planning

scheme may be required to make payments which are commonly called "betterment charges." It is too soon after the passing of the Act to be able to forecast the extent to which local authorities will recoup themselves by betterment for the expenses to which they will be put, both in compensating owners who are injured and in the cost of preparing their schemes. Planning is obviously not a matter for the amateur, and the necessary costs for expert assistance must be heavy. It is unavoidable, even after all betterment charges have been brought into account, that substantial expenses shall fall upon ratepayers, even though it is to be hoped that in course of time future generations will reap advantage in pocket as well as in healthier and more ample lives. This factor of expense must tend to remove the work of preparing schemes from smaller authorities, and towards placing it increasingly in the hands of county councils and the councils of county boroughs, and of those other well-to-do or populous areas which can raise the necessary money. Planning enthusiasts frequently complain that too little use has been made by local authorities of the planning powers which have now been available for nearly thirty years. To some extent progress has been slow because of the innate conservatism of the British race, and its innate respect for private property, but to a still larger extent because councils have felt a natural hesitancy about saddling their constituents and future generations with payments the amount of which could not be foreseen.

The Housing, Town Planning, &c., Act, 1919, made it obligatory for the councils of boroughs and urban districts of a population of more than twenty thousand to make town planning schemes. Nevertheless, much

less progress had been made by 1932 than had been hoped for, and it had been found necessary for Parliament to suspend the operation of the compulsory provisions of the Act of 1919. The Act of 1932 does not therefore in so many words say that planning is compulsory. It empowers all local authorities of whatever size to make planning schemes, and confers upon the Minister of Health a power to require a scheme to be made wherever one is necessary. Since 1932, partly in consequence of stimulation from the Ministry and partly because at last the matter is attracting public attention, and evils which might be reduced by timely planning are pressing on the public conscience, the progress has been more rapid, until at the present day resolutions have been passed by local authorities to prepare planning schemes for about two-thirds of the area of England and Wales. The speed with which such resolutions are extended to the remainder of the country, and with which resolutions already passed are translated into operative schemes which have the force of law, will depend on the enthusiasm with which readers of this book and other members of local authorities and of the public throw themselves into the task.[1]

Probably no topic connected with town and country planning has attracted so much notice as the power of controlling the design and external appearance of buildings. On the one hand much has been hoped by those persons whose special interest is the protection of a town or of a beauty spot in the country from the intrusion of a building which they regard as an eyesore—often a

[1] Readers interested in planning should buy the *Report on the Preservation of the Countryside*, by the Town and Country Planning Advisory Committee, published in September 1938, H.M. Stationery Office, price 6d. net, from which the figure just stated has been taken.

building which strikes them as unfamiliar and therefore necessarily objectionable—and on the other hand the use of this power, so far as it has been used up to the present, has led to a good deal of heart-burning among those architects and those property owners who wish for something better than the stereotyped designs. It is as yet too soon to say whether the entrusting of a power of this kind to elected authorities can be successful ; what has been achieved so far is not encouraging. It has been found extremely difficult for a local authority to use such a power to prevent the repetition of the commonplace, and almost fatally easy to use it so as to stifle originality by architects or builders. The Act of 1932 attempts some safeguards. Where a planning scheme includes provisions controlling the design and external appearance of buildings, the Act requires that the scheme shall also establish an appellate tribunal consisting of an architect, a surveyor, and a justice of the peace, or alternatively shall provide for an appeal to a bench of magistrates. If permission is refused at the stage of interim development there is a right of appeal to the Minister of Health.

The power of controlling the design and external appearance of buildings was given to many local authorities by special Acts of Parliament between 1920 and 1932. The best known of these Acts, though not the original precedent, was promoted by the Corporation of Bath. In some of these Acts one form of tribunal was established ; in some the other form. Hence the alternative provisions in the Town and Country Planning Act, 1932, either of which may be adopted by a local authority which makes a planning scheme. In some of the precedents in local legislation the powers were

confined to streets or part of a town which had special architectural quality, it being the intention of Parliament to prevent the intrusion in such places of discordant architectural notes. Other local authorities succeeded in obtaining from Parliament powers available throughout their districts, and the powers obtainable by schemes under the Town and Country Planning Act, 1932, will be available throughout the area for which a planning scheme is made, which may extend beyond the ordinary territorial jurisdiction of the planning authority. It thus becomes an extremely far-reaching power. It is, moreover, possible to provide in a planning scheme that compensation shall not be payable for loss caused by the exercise of this power by the planning authority, and even if compensation be not in terms excluded, it may still be difficult to convince an arbitrator upon a claim for compensation that the building owner has suffered pecuniary damage through being prevented from adopting a design or giving to his building the external appearance which he desires.

The provisions we have just been discussing are those which will be found in planning schemes when these become operative. Throughout a large part of the country at the present time resolutions have been passed for preparing schemes, but the schemes themselves are still in preliminary stages. Inasmuch as the Act of 1932 empowers a local authority to pull down or alter, sometimes on payment of compensation and sometimes without compensation, buildings or other work of development executed not merely after the coming into operation of a scheme, but also in the interim period between the passing of a resolution to prepare a scheme and the coming into operation of the scheme itself,

Parliament has provided in the Act of 1932 that development may proceed in this interim period under certain safeguards. The essence of these safeguards is that the Minister of Health is empowered to make interim development orders, either general for the whole country or special for particular planning areas, under which development may proceed without the risk of being demolished because it is found contrary to the scheme when the latter comes into operation. In 1933 a general interim development order was made for the whole country. This permits development, without the risk of subsequent uncompensated demolition, if permission is obtained from the local authority concerned. If that local authority refuses permission in a particular case, there is a right of appeal to the Minister of Health. The more important decisions given by the Minister on these appeals are published, and provide guidance for local authorities on the one hand and for property owners and their advisers on the other. These interim development decisions may cover any of the topics of the Act of 1932, but those which have aroused most public interest have been decisions connected with the design and external appearance of buildings mentioned in the foregoing paragraph. Generally it may be said that the tendency in the Minister's decisions has been to allow greater scope for artistic invention and architectural ingenuity than local authorities have been willing to admit. There is a school of thought which would have preferred to retain the appeal to the Minister even under operative schemes rather than that appeals should go to a specially constituted tribunal sitting locally. This would certainly, judging from decisions already given upon interim development, have tended to free designers from the

grasp of the dead hand of convention and mediocrity. The Minister of Health, however, let it be known when the local legislation precedents above mentioned were before Parliament that he did not wish to assume the burden of deciding these questions of taste, and accordingly the Town and Country Planning Act, 1932, provides for a tribunal other than the Minister once the interim development stage is past. The published decisions on interim development may, it is to be hoped, be taken for some guidance by magistrates and by the special tribunals when these come to be established.[1]

[1] On the whole subject of this chapter, see particularly Sir Gwilym Gibbon's *Problems of Town and Country Planning* in the list at page 187. Sir Gwilym Gibbon was for many years Director of the Local Government Division in the Ministry of Health.

CHAPTER IV

ROADS

In the early days of English history it was not contemplated that such local authorities as then existed should be called upon to provide roads or to keep them in order when provided. When the Romans left Britain there were a few main roads across the country. There must have been subsidiary roads, but these have passed into oblivion and have not left the trace in history which has been left by the Watling Street, Ermin Street, and others of that class, some of which are the basis of the main traffic routes of the present day. As the country emerged from the dark ages it was found that the exigencies of ordinary life had given rise to what we now call highways. A theory was evolved that these had been voluntarily dedicated to public use by the owners of the land over which they passed. This theory was near enough to the truth, and it has practical consequences which are found in every branch of highway law to-day. It may be conjectured that most highways, before they came to be recognized as such, had had a local history of user for generations if not centuries, and that the dedication by the owner of the soil to public use did not take place at any one point of time. As years went on, and it was recognized that a mere track across open land required to be kept in order if it was

to be useful for pedestrians, pack-horses, and whatever other traffic might exist, it was found difficult in practice to insist that the landowner, who in theory had voluntarily given up this land to public use, should go further and assume the burden of keeping the highway in good order. The main roads came in course of time to be called the King's Highway, but this never meant that the King accepted any responsibility for their upkeep. What the phrase originally meant was that offences committed on the highway were considered in a special degree to be offences against the King's peace which he would punish, and that all the King's subjects, and strangers who were within the realm with his permission, were to have the right of using these highways. This doctrine of the right of all and sundry, once a highway has been dedicated by the landowner, to use it for all the purposes for which it was, or was supposed to have been, dedicated is of extreme importance at the present day. As time went on, a doctrine was evolved by the courts to the effect that where no landowner could be found to have assumed the burden of keeping up the highway, as an obligation incidental to his holding his land, the duty lay on the inhabitants of the parish through which the highway passed. It is still possible, though it is almost unknown, for a prosecution to be launched against the inhabitants for failure in this duty. The matter rested thus for centuries. As might be expected, an obligation imposed on an undetermined body of persons like the inhabitants of a parish, or even of a county, was not very seriously regarded, and from time to time it was notorious that the general state of the King's highways throughout the country called for remedy. One of the activities of the King's Council in

the Tudor period, which with the decline of the power of the King and Council in the Stuart period came to be regarded as a tyrannous exercise of central power, was directed to securing the proper performance of this duty of maintaining highways. With the decline of the central power in the Stuart period, and its inability to recover the direction of local affairs in the early eighteenth century, a state of things grew up in which it was seen that the creation of new roads from one important centre to another could be made a paying commercial proposition. Hence the laying of the turnpike roads, which with their toll-gates were undertaken as a source of profit by their promoters, just as railways were undertaken in the nineteenth century. It was still, it will be seen, no part of the duty of any public authority to provide communications of this sort. At the end of the eighteenth century the position was that there were some relics of Roman roads still in use; there were many turnpike roads in private ownership; and with the gradual growth of the population, and with the intensification of agriculture, and the beginning of manufacturing industry, new roads had formed themselves in many places under the theory of dedication by landowners which has been already mentioned. When new roads, not maintained as a source of profit by turnpike trusts or other private owners, came thus into existence, the law imposed the obligation of maintenance upon the parish or the county, but the degree in which that obligation was observed differed widely in different parts of the country, according to what the inhabitants felt to be their local requirements. Among the innovations which came into being in the late eighteenth or early nineteenth century was the appointment under

Act of Parliament of " surveyors of highways " whose duty it was to raise rates, much as the poor rate had been raised since the time of Queen Elizabeth, and to apply the proceeds to maintaining existing highways. It was still nobody's duty to provide new highways. The law assumed, and it was an assumption based upon experience, that these would somehow provide themselves when need arose. The creation of something like the modern system of local government, by successive stages in the nineteenth century, has been described in an earlier chapter, and among the duties which the modern local authorities took over were those of the surveyors of highways under statute, and the older common law duties of the inhabitants at large. The full name of an ordinary highway at the present time is still " a highway repairable by the inhabitants at large," and it is of interest also to remark that most new streets (in the ordinary sense of the word street) come into existence first as " private streets," for the development of building estates or some such purpose, and they may never become highways repairable by the inhabitants at large, or may do so only after many years. In the nineteenth century certain local authorities acquired power to lay out streets or bring highways into existence themselves, and in the present century this provision of highways by public authorities has gone ahead with leaps and bounds, with arterial roads and similar conveniences for motor traffic. The last stage in the process has been the Trunk Roads Act, 1936, under which the maintenance of many of the important roads has been made an obligation of the central Government. Apart from these last-mentioned roads, the position as left by the Local Government Act, 1929, is that outside urban

areas the county council is the highway authority for all highways, and that in boroughs and other urban areas, except county boroughs, the county council is the authority for the maintenance of the most important roads, the town council or urban district council being the authority for the less important. The standard of upkeep of existing roads, as well as the cost of building new ones, has risen enormously in the course of a generation. Improvement is increasingly financed from funds under the control of the central Government (largely derived from the taxation of motor vehicles), which funds are paid to highway authorities according to their needs and the standard of upkeep which they maintain.

It is remarked above that many streets come into existence for purposes of private development, and so long as they are not taken over by the highway authority, as representatives of or successors to the inhabitants at large, it is for the owner of the land on which the street is situated to maintain it (or not to do so if he pleases) according to whatever standard he thinks necessary. Where speculative development takes place, and building plots are sold either before or after buildings are erected on them, the purchasers of the plots are apt to find the upkeep of the street, which is normally sold with the plot and in the absence of anything to the contrary is assumed to have been sold to each purchaser up to the middle line of the street, a serious burden. Hence the owners of land abutting on a street are usually desirous that the burden of upkeep shall be taken over by the local authority, and that when taken over the street shall be maintained at the cost of the ratepayers as a whole. The general body of ratepayers, who are already

responsible for the upkeep of existing highways which are repairable by the inhabitants at large, would however have a grievance if they were made responsible for newly formed streets on which money had immediately to be spent. Hence the law provides that before a local authority can be compelled to take over a private street as a highway repairable by the inhabitants at large, and thereafter to maintain it, they may require it to be levelled, paved, lighted, sewered, and otherwise put in order at the cost of the persons whose premises abut upon the street. However anxious these last-mentioned persons may be to have a good street in front of their properties, and to be free of the constant burden of periodical repairs, they naturally object to the expense of putting the private street in order, and there may be fierce disputes between frontagers in the street on the one hand and the local authority as representing the general body of ratepayers on the other.

This liability to maintain existing highways, and where necessary to provide new ones, is one of the most expensive resting upon local authorities (that is to say upon their ratepayers) at the present day. As has been already mentioned, substantial and increasing contributions are made from central funds, and, with the growth of motor transport and the consequent demand for uniform high standards, it is to be expected that further inroads will be made on central funds, with the consequence that the central Government will have more and more to say about the construction and maintenance of roads, and, in accordance with the policy of the Trunk Roads Act, 1936, will take them more and more under its control and out of the hands of local authorities.

CHAPTER V

EDUCATION

THE provision of education for those, or the children of those, who cannot pay for it themselves was from early days an object of charity. Some of the most famous public schools began their life as charitable foundations before the Reformation. Most of the old "grammar schools" throughout the country were founded in the Tudor period, in the name of monarchs who had possessed themselves of funds formerly belonging to the monasteries and similar foundations. In more recent times the foundation of charity schools, ragged schools, and similar places for the education of the very poor received a fresh impetus from the humanitarian movement of the early nineteenth century, while the "national schools" under the auspices of the Church of England, the "British schools" under the auspices of certain nonconformist bodies, with the Roman Catholic schools and others not falling into either of the groups just mentioned, went a long way in the first half of the nineteenth century to make free education, or education at cheap fees, available to all those who cared to ask for it, up to an elementary standard.

The first recognition on a large scale that the provision of free education was a proper function of the State came with the Education Act, 1870, but it was not until

a generation later that public educational facilities under the auspices of the State extended to more than elementary education. By the Act of 1870 a new class of local authority, the school board, was established, elected in much the same way as the then existing local authorities were elected for purposes of relief of the poor or public health and other local government purposes. The details of the election of school boards were, it is true, not quite the same as those of the other bodies, but this is no longer important, since the boards themselves ceased to exist by the Education Act, 1902. They are of interest in connection with general local government, chiefly as an illustration of the tendency of the nineteenth century to set up a fresh authority when a fresh need was recognized, as opposed to the tendency exemplified in the Local Government Act, 1929 (which has been already mentioned), to concentrate as many functions as possible in the hands of one local authority.

After the passing of the Education Act, 1902, it was increasingly recognized that the local educational authorities can fulfil functions in regard not merely to elementary education but to higher education also.

At the present day, therefore, the educational system of the country, sketched in outline, is as follows.

At the apex of the pyramid there are the universities which originated as religious foundations or through private benevolence, and still maintain complete independence from governmental or local government authorities, except in so far as their acceptance of money from these authorities obliges them to pay regard to their views. The universities, from the largest to the smallest, now in fact receive assistance from the Government, and many of them also receive assistance from

local education authorities with whom they work in increasingly close co-operation. They are, however, not controlled by those authorities.

Next there come the "public schools," strictly so called, whose status is regulated and title conferred by Acts of Parliament, and which (by one of those freaks of nomenclature so often to be found in the English scheme of things) are entirely private foundations. There are numerous other schools giving the same type of education which are not public schools in the statutory sense, but are equally free from Government or local government control. Then there is a large number of ancient grammar schools and smaller foundations which in modern times have found themselves obliged to accept assistance from public educational authorities, but are still under their own boards of governors.

Side by side with these is an increasing number of secondary schools maintained entirely by local education authorities, and, at the basis of the pyramid, there comes the elementary school which may be one of the "national schools," "British schools," or other foundations provided by some religious or charitable body (which receive large grants of public money, and in return have to submit to pretty close control by local education authorities). These are technically known as "non-provided" schools. There are also some, usually small, completely private schools which make no attempt to obtain grants of public money and are not under any sort of public control.

By the Education Acts every child between certain ages is obliged to receive education, and, if challenged by the local education authority, the parent or guardian is bound to show the magistrates that the child, where

it is not attending a public or a private school, is receiving efficient instruction somehow. It is for the parent to provide this, but he has the option of obtaining it free and at the public expense if he so desires. Increasingly, though educational enthusiasts are not yet satisfied with the degree in which it is brought about, a ladder of opportunity is being erected by which children can pass without charge, or at small charge to their parents, from the earliest to the latest stages of their educational careers. Education has come to be the most costly of the public services, and one of those which has the most complete organization of its own.

At the centre of things the Ministry of Education is one of the largest departments of Government, employing, in addition to its headquarters staff, a number of inspectors and examiners who visit schools throughout the country and advise as to their efficiency. Locally, the control of education, so far as it is provided at the cost of public funds and so far as it is privately provided but subsidized by publicly elected authorities, is in the hands of local education authorities—dealing both with elementary education and with higher education. In county boroughs the council is the local education authority. Elsewhere it is the county council, though the Education Act, 1944, provides for " divisional executives," based primarily upon the larger boroughs and urban districts. The Education Act, 1944, requires the local education authorities to formulate complete schemes for providing training of all sorts, and for the supply and training of teachers. Much latitude is left to local education authorities in such matters as providing separate accommodation for boys and girls, and reorganizing their schools so as to create self-contained primary schools for

children up to eleven years of age and for children between the ages of eleven and fourteen or sixteen (as the upward age will be when the latest legislation on the subject has come fully into force). The Act of 1944 contemplates that no child shall be deprived of education at any stage, through inability to pay fees.

A marked feature of the English educational system is its being designed to foster intelligence, and the general capacity of children and young persons, as individuals rather than as members of the community. It is open to local education authorities to provide specialized training in technical schools, schools of art, evening institutes, and so forth, designed to assist young people to prepare themselves to earn a living, but this is supplementary to the intellectual training. So far as education is carried out at the cost of public funds, the deliberately individualistic bias of the curriculum is not at any stage allowed to be disturbed in order to inculcate wider interests in children and young persons than that of obtaining an education or a living for themselves.

The extent to which local authorities have made use of their powers to provide technical training differs a good deal. It is naturally most complete in the large industrial and commercial centres where there is a strong demand for preparation for local industries. Many of the larger local authorities provide special facilities, such as training colleges for preparing teachers, as well as granting scholarships at such colleges and even at the universities for persons desiring to take up teaching as an occupation. This work is largely assisted by Government grants, but here again a peculiarity of the state-aided English system is its individualistic bias, the teacher being encouraged to regard the development of

the individual pupil as the final object of the educational process.

Closely connected with the provision of education itself is the school medical service, and the provision of free meals and other assistance for school children. By section 80 of the Education Act, 1921, local education authorities for the purposes of elementary education are bound to provide for the periodical medical inspection of school children. The parents are informed of any defect which may be found, and if the parents are unable to obtain treatment this is provided by the education authority for certain common ailments or defects. Some education authorities go further and provide treatment for heart disease, rheumatism, crippling defects, and others.

In secondary schools for which education authorities are directly responsible similar provision must be made, and those authorities have power to arrange at their discretion for the medical treatment of the children in schools which are not provided or maintained by them.

The educational functions of local education authorities, which, as we have seen, are the councils of counties, county boroughs, some other boroughs, and some urban districts, are performed through an education committee. These committees must consist, as to a majority of their members, of members of the local education authority itself, but may also have co-opted members with experience in education. All matters relating to the exercise of a council's educational powers are by Act of Parliament referred to its education committee, except the power of raising a rate or borrowing money. It does not follow that the education committee is entitled to act independently of the council. In some areas it is

allowed freedom to act almost as if it were a separate authority; elsewhere its function is to report to the local education authority itself, with which lies the ultimate decision in important matters.

In a thickly populated area the education committee will probably work through special committees for such matters as elementary education, secondary schools, technical schools, the training of blind persons, the provision of sites, the provision of books, and perhaps the training of teachers.

In some places the education committee has a separate staff assigned to it. The clerical work of such a committee may be done by a representive from the department of the clerk of the council who may or may not bear the title of secretary to the education committee; or an official known as the director of education may be appointed who will act as secretary to the committee as well as its chief executive officer. There are many other varieties in arrangement of the duties of officials on the staff of such a committee, and in their relation to the teachers in the schools.

Finally it may be mentioned that, even where the general accounts of a local authority are not subject to audit by the district auditor (see pages 59 *et seq.*), that is to say, in the majority of boroughs, their education accounts are subject to this form of public audit.

Before leaving the subject of education it may be of interest to mention some forms of special service which may be undertaken, and increasingly are undertaken, by local education authorities. Medical inspection and treatment has been already mentioned. Dental inspection and treatment is almost a corollary. Then local education authorities have power to arrange for

the cleansing of verminous children, for the conveyance of children to and from schools whenever such provision is required by the circumstances, and for persons to look after the children when travelling. If children live three miles from the nearest school, this is an answer to proceedings against the parents for failing to send the children there, but the provision of means of conveyance prevents parents from putting forward this excuse. Special provision is made for the conveyance to school of defective or epileptic children.

Of late years much more attention has been given by local education authorities to the provision of school meals. This service was stimulated by the growth of unemployment, but it originated with the discovery that even in normal times many children failed through defective nutriment to obtain full benefit from the education provided. Education authorities had originally to recover the cost of these meals from the parent, unless satisfied that the parent was unable to pay, but since the Act of 1944 the intention is to make this eventually a free service. Milk in schools is already free. It may be mentioned that teachers cannot be required to supervise or assist (or, on the other hand, to abstain from assisting) in the provision of meals or in collecting the cost from the parent. If they do so it is of their own free will.

Education authorities also co-operate with employment committees attached to the employment exchanges, and with bodies of employers, in providing information to children about to leave school as to openings in industry.

The Education Act, 1921, empowered local education authorities to supply or assist holiday and school camps, either in term time or in holidays. Although less has

been done in this matter than has been done in some continental countries, it is a development which is bound to make its way, and the Physical Training and Recreation Act, 1937, provided fresh means for authorities who are ready to co-operate in this modern form of training.

The Board of Education laid it down, even before the Act of 1921, that all schools for older children, at any rate, should have sufficient land for playing-fields, and all schools are required to have at least a playground of some kind.

It has not been practicable in this reprint (Summer 1947) to deal adequately with the great changes brought about by the Education Act, 1944–46. Readers are referred to the annotated edition of the Act by Wells and Taylor (Butterworth and Co., 1947) for fuller information.

CHAPTER VI

SOME MISCELLANEOUS SERVICES

Fire Brigades and Fire Protection [1]

THE title chosen for this part of this chapter is that of the Royal Commission which investigated the powers of local authorities and reported at great length in 1923. A further inquiry was made by a small Departmental Committee set up by the Home Secretary in 1934. For various reasons of finance, and of difficulty in securing adjustment between the views and claims of different classes of local authorities, the law on this subject remained in a state of some confusion, which contrasts unfavourably with the high degree of efficiency which has been attained by many fire brigades themselves.

The principal Act of Parliament under which local authorities provided fire brigades was passed so long ago as 1847, and became generally applicable in urban areas in 1875. Outside those areas the service until 1939 was provided, if at all, on a parochial basis under Acts of Parliament of 1833 and 1867, unless the rural district

[1] The Fire Brigades Act, 1938, would have altered the state of things described, but never came into full effect by reason of the War. For information about the Act of 1938, see the articles in the *Justice of the Peace and Local Government Review* for 15th and 29th October 1938. A Bill introduced in 1947 will make the councils of counties and county boroughs the fire brigade authorities.

council had obtained from the Minister of Health the powers of an urban authority under the Public Health Act, 1875. Outside London no local authority was obliged by Act of Parliament to provide or maintain a service for the extinction of fires, and although most urban authorities and many rural authorities did provide a service of some kind there was no system of Government grants, or central control coupled with powers of compulsion, to ensure that the service was kept up-to-date. In practice there was for some years a Fire Adviser attached to the Home Office, whose specialized assistance and advice was of much value to those local authorities who were sufficiently enlightened to take advantage of it, but the Home Secretary possessed no power of compulsion.

While some provision for the extinction of fires is feasible even in the smallest parish, it is clear that it must there be on a small scale and an amateur basis, the most that can be done in such places being to pay retaining fees to men who are willing to give their services when required. It does not seem necessary to discuss the details of parish and village brigades any further.

In towns and urban areas, or those rural districts where the rural district council had, by reason of the existence of valuable property or otherwise, obtained the powers of an urban authority, the brigades provided fell into different classes. Acts of Parliament under which police forces are established provided amongst other things for the services of policemen as firemen, and, independently of the police force, for brigades of firemen who were under the direction of the chief constable and received pensions from police funds. In other places, men served

partly as constables and partly as firemen, and arrangements varied according to local circumstances.

The next class of brigade to be considered is the so-called professional brigade, whose staff consists wholly of full-time firemen, or has a sufficient nucleus of full-time firemen to do the work, subject to calling up retired men or other auxiliaries in an emergency. Provision is made by Act of Parliament for the payment and pension of professional firemen.

In other towns again the fire brigade was constituted on a part-time basis, but still under the control of the local authority, which paid from the rates for whatever remuneration the men received and for the provision of equipment. It is probable that brigades of this class formed the largest number.

Apart from these brigades under the control of a local authority, there were many volunteer fire brigades, which elected their own officers and were free from the supervision of the local authority, although they might in some places receive from them an annual subsidy or a grant of buildings and appliances. Some of these brigades included professional firemen, their finances being drawn from public subscriptions and donations, and from charges for attendance at fires. It should be mentioned that a local authority had no right to make a charge for the assistance of its fire brigade at fires within its district. It is known that in some cases attempts were made to recover such charges, either from the owner of the property where the fire occurred, or from the insurance company whose funds were benefited by the extinction of the fire, and some insurance companies showed themselves willing to make payments either to the local authority or to the firemen themselves. Any practice of

this kind is open to objection, if only because it leads to suggestions that the brigades will give better service at fires where they know they will get their money back, or get a payment in the nature of a gratuity. Under the Fire Brigades Act, 1938, the practice was stopped. With volunteer brigades not under the local authority's control, and not supported from the rates, the position was different; they endeavoured, like any other persons providing a voluntary service, to make the best terms that they could. In some areas there were private fire brigades, maintained by landowners or firms for the protection of their own property, and occasionally these, like the Durham and Northumberland Coal Owners Association's fire brigade, were prepared to attend fires outside their own premises.

In addition to controlling fire brigades and providing them with fire-engines and other equipment, local authorities have the power to provide fire-alarms throughout their districts, and every local authority or water company supplying water under Act of Parliament is bound to provide fireplugs and all necessary works for securing an efficient supply of water in case of fire. Obviously the extent to which this obligation can be satisfied must depend on local circumstances, and the needs of the moment when a fire breaks out. As was pointed out in evidence given to the Royal Commission and the Departmental Committee which have been already mentioned, it is not practicable for a local authority or any other water undertaker to provide a supply of water at a pressure which will enable it to be used for fire-hoses at any and every point in its district, irrespective of levels or of the number of buildings requiring to be served with water for other purposes.

In fact, there must be many places where the supply of water for the extinction of fire is far from sufficient, notwithstanding the wording of the Public Health Act, 1875, and this by reason of circumstances outside the local authority's control. The most that can be done is to ensure that multiplication of buildings in any area is accompanied by the provision of water mains, for this as for other purposes, leaving the sparsely built area to nature, if water cannot be laid on at reasonable cost.

Miscellaneous matters, where local authorities have powers for protecting life and property from fire, are to be found scattered over many Acts of Parliament, besides those which deal specifically with fire brigades and fire protection. It has sometimes been suggested that all powers related to fire should be brought into one Act, but this is really impracticable, since fire is not a subject in itself but is an evil which may occur in many kinds of premises affecting many kinds of property—moveable property as well as buildings.

Every town council, urban district council, and rural district council has power to make byelaws with respect to the structure of buildings for preventing fires, and the very great majority of local authorities in whose areas there is a sufficient aggregation of buildings to make such byelaws necessary have made them. Some Acts of Parliament passed for all localities have also contained provisions with the same object, but in modern times it has become usual to give byelaw-making powers instead of including direct provisions in Acts of Parliament. Under other Acts of Parliament there is power for local authorities to require sufficient means of egress from places of public resort, and there

are special requirements for theatres and for cinematograph theatres where inflammable film is used.

Local authorities have also powers to require special precautions in inhabited buildings of more than a certain size, in houses occupied by more than one family, and in factories and workshops.

Ambulances

From fire brigades and fire protection it seems a natural transition to speak of the provision of ambulances. The councils of all boroughs, urban districts, and rural districts, have power to provide ambulances for the conveyance of persons suffering from infectious disease, and may pay the expense of conveying these persons to a hospital or other destination. They have also power, under more recent legislation, to provide ambulances for cases of accident. In practice, also, the county police in many areas have done the same, although there is no express authority in any Act of Parliament for their doing so. County councils have power, like the other authorities above mentioned, to provide ambulances for cases of infectious disease.

For many years the ambulance services were not effectively co-ordinated, and it was not unknown for the local authority which owned an ambulance to refuse to send it to pick up an accident case from a road just outside its boundary. There were even cases where a person who had met with an accident, for whom there was no hospital or other accommodation in the district for which the ambulance was provided, was taken by ambulance to the boundary of the district and dumped

there, to await some other ambulance or other vehicle to take him to a place where he could receive medical attention. In the last few years, under pressure from the Minister of Health, and under pressure also from the Home Office, much more has been done to co-ordinate these services, but the provision of ambulances on a basis of small local government areas is out-of-date. With the co-ordination of hospital services, which has been mentioned in an earlier chapter, and with the facility for removing sick and injured persons which is given by motor vehicles, the ambulance service will sooner or later have to be reorganized on a wider basis.

Air Raid Precautions [1]

From precautions against fire and from the provision of ambulances, it is again natural to pass to the subject of air raid precautions, which has assumed so large a place in public attention. It is evident that the problem of protecting the civil population against air raids is only one part of the problem of national defence. It is something which must be done on a co-ordinated basis, since the object is not merely to safeguard the lives and properties of the inhabitants of any given area which is attacked, but also to reduce the risk of widespread panic, which might have a serious effect on the national morale.

Although the matter is essentially national, the Government and Parliament have, in the absence in this country of any other ready-made authorities available for duties of this kind, fallen back on the ordinary local authorities, constituted for ordinary purposes of local government,

[1] This section has been deliberately left as it was written before the War, as a matter of interest.

to act as their agents in instructing the public how to protect itself in case of air raids, and in providing accommodation and equipment. The Government's scheme is based on the recruiting of a large number of voluntary workers to act as air raid wardens, as drivers of vehicles, as workers to clear contaminated areas of gas, and to demolish or shore up dangerous buildings, and for similar work. Local authorities are made responsible for enrolling volunteers for these purposes, and the professional staffs of local authorities will be responsible for controlling such work as demolition and decontamination. Rescue work in case of air raids will be co-ordinated with the fire services and ambulance services of the local authorities. The necessary finance of these precautions depends on the Air Raid Precautions Act, 1937, the general scheme of which is that the cost is divided between the national exchequer and the funds of local authorities. At the time of going to press, there is acute division of opinion about the measure of efficiency reached by local authorities, at the time of the crisis in September 1938. Whether the service will be reorganized, with local authorities playing a less important part, time alone will show ; the difficulty of doing so would be immense, because it is local authorities alone who possess in every area the requisite offices and staff.

Aerodromes

Under the Air Navigation Act, 1920, the councils of counties and county boroughs, and also the councils of other boroughs and urban districts have power to establish and maintain aerodromes. These have to be

licensed by the Air Council, but, in the Report of Lord Cadman's Committee, published in 1938, it was indicated that more might be done towards co-ordinating the establishment of local aerodromes and supervising the proposals of local authorities. With the rapid progress of technical development in air travel, it is no doubt the case that proposals which were adequate when the Act of 1920 was passed are now out-of-date, and increased expenditure will be needed to make an aerodrome satisfactory. The Royal Institute of British Architects published a Report in 1930 urging the further provision of aerodromes in order to develop internal transport, and suggested co-operation between local authorities, by means of town planning schemes under the legislation which is now to be found in the Town and Country Planning Act, 1932. Considerations of expense, and some doubt about the future of air transport in a country so small as England and Wales, and so well provided with rail and road facilities, have undoubtedly held local authorities back from embarking on this form of enterprise. Meanwhile the Town and Country Planning Act, 1932, enables them to reserve land by a planning scheme as the site for an aerodrome, even if the time is not ripe to provide one, and it may be expected that in future local authorities will venture more and more into this field rather than leave it (so far as internal and commercial aviation is concerned) to private enterprise.

Recreation Grounds, Commons, etc.

Public pleasure grounds, recreation grounds, and other open spaces are provided in most urban areas by the

town council or urban district council, and in rural districts are frequently provided by the parish councils. They are not expected to show a profit in the local authority's accounts, although revenue can be secured in many places by the letting of pitches to cricket and football clubs and similar bodies, and by the holding of concerts and other means of recreation for which the public is prepared to pay. Under recent legislation, such as the Public Health Act, 1925, the power of local authorities to take land for purposes of recreation, and even to let pieces of land for a period to clubs for that purpose, has been increased. The Physical Training and Recreation Act, 1937, marks a further step in this direction.

Besides pleasure grounds and recreation grounds specifically provided for that purpose, there are common lands which to an increasing extent have been put under the control of local authorities, although it is by no means everywhere the case that commons are under their control. In the county of Surrey, for example, which is exceptionally rich in common land, it is understood that the greater part of such land is still in private ownership. There is a popular delusion that common land is land over which the public at large has a right of passage, and even of recreation. This is not so, although the nature of common land is such that it is difficult and indeed not worth while to exclude the public, and those who have legal rights over it are generally content simply to protect those rights, and, subject thereto, to leave it open.

The recent Acts of Parliament which deal with commons make it easier for them to pass under the control of local authorities, and, subject to the preserva-

tion of grazing rights and other rights which formerly attached to them, such lands are frequently indistinguishable from those which have been provided and thrown open to the public for their enjoyment in modern times.

In many rural parishes (and sometimes in places which have been merged in urban districts or in boroughs) there will be found a "village green." This is, in law, land upon which from time immemorial the inhabitants have been accustomed to play games. Such greens usually belonged at one time to the lord of the manor, and are thus an interesting survival of our early history. At the present day they are commonly under the control of parish councils, who are bound to preserve them as a place for public games.

Libraries, Museums, and Art Galleries

Another form of public service performed by local authorities from which, in the nature of the case, revenue cannot be obtained, is the provision of public libraries. Powers for this purpose have existed in Acts of Parliament for many years, and have been fairly widely used in towns. It is, however, only recently that a serious attempt has been made to supply public libraries for those who live in country districts, and the movement has been greatly stimulated by grants from the Carnegie Fund. The general principle is that the inhabitants of the area for which a library is provided shall be entitled to borrow books, and that at convenient centres reference libraries shall be established. Much difference of opinion exists upon the extent to which the public take advantage

of these facilities, and probably it differs widely in different areas. The tendency at the present day is to link the public library to the schools, and to endeavour to foster a habit of reading and borrowing books among the younger generation, while the librarian is encouraged to provide those books which will have most value for purposes of reference for older scholars and for students. It is probably in this direction that the greatest utility of public libraries will be found, the business of purveying fiction being left to private enterprise. In some places the purveying of fiction, and of some kinds of scientific works, has given rise to unnecessary difficulties through attempts on the part of library committees to establish a censorship over works of which they disapprove.

The provision of museums is another semi-educational function from which no profit is to be expected, and the provision of art galleries, usually to be found in the larger towns, falls under the same heading.

CHAPTER VII

TRADING ENTERPRISES

General

We pass next to trading undertakings of local authorities or others which, while not run for the purpose of making a profit, are expected to earn their keep. We have spoken already of some such undertakings, notably those for the supply of water. From one point of view the housing of the working classes can be considered as a trading or semi-trading undertaking, since it is an enterprise which, if not carried out by local authorities, would (if carried out at all) be in the hands of private persons seeking to make profit. Both housing and water supply are, however, commonly and properly regarded as public services rather than trading undertakings; that is to say the local authority would still have to carry them on if they were carried on at a loss—as indeed housing of the working classes always is, since there is a heavy burden of debt, a legacy from past years, which has to be met with the help of grants from the central Government. The services with which it is proposed to deal in this chapter are of two kinds: those which most people would say might properly be run in such a way as to realize a profit for the benefit of the ratepayers at large, and those which it is generally

considered should be run as nearly as possible at cost, since the primary object is to provide a public service. It is not possible to draw any sharp line of distinction. There is a school of thought which would say that such enterprises as municipal transport undertakings should be run at cost or even at a loss, since it is important to the whole community that workers should get to and from their work at small expense, and thus be enabled to live in healthier surroundings. There is another school of thought, that which would say that undertakings such as markets and slaughterhouses, and even cemeteries, should be made to yield their quota to the rates as they would have to yield a dividend to their shareholders if they were in private hands. There is, of course, a school of thought which even holds that it is illegitimate for local authorities to carry on trading and semi-trading undertakings at all, except perhaps those which have a direct bearing on the maintenance of public health. It may be said that a large part of municipal history in the nineteenth century consisted of the struggle between those who wish to get as much as possible into the hands of public authorities and those who wish to keep as wide a field as possible for private enterprise. At the present day this battle is not much fought on grounds of theory, although from time to time echoes of the old arguments are heard in Parliament and elsewhere, when proposals are made to confer on local authorities the power of undertaking fresh activities.

At the beginning of March 1938 there was a debate of this kind on a Private Member's Bill which would have enabled local authorities to deal in coal, milk, and other necessaries of life. The speakers for the Government, indeed, expressed the view that there

was a distinction in principle between allowing local authorities to trade in commodities of this kind and allowing them to undertake the supply of water or transport. Private members in the course of the debate brought out all the nineteenth-century arguments, to the effect that municipal enterprise was necessarily less competent than private enterprise, and, on the other hand, to the effect that municipal trade in the essential commodities would place these at the disposal of the poorer classes at more reasonable prices—in other words that the task of supplying them should not be regarded as a means of making money but as a public service.

While it is still possible to argue on these lines concerning new proposals, the field already open to local authorities for trading or semi-trading undertakings is wide, and within that field the reasons for or against embarking on such undertakings are practical rather than theoretical. It has been known for a local authority with a permanent Conservative majority, which might have been expected to be wedded to the principle of private enterprise, to be among the most eager in favour of taking over the local transport undertaking. On the other hand there are areas with permanent Labour or Socialist majorities on their councils which exist contentedly with their water supply in the hands of a private company. The truth of the matter is that neither municipal enterprise nor private enterprise is necessarily more efficient than the rival system. It depends on management. A competent manager supported by a committee of competent business men may be expected to make a success of his undertaking, whether those business men are called a committee of a local authority or a board of directors of a company. There are, no

doubt, dangers inherent in the control of enterprises by local authorities which exist to a less extent in their control by companies ; but, on the other hand, company control or control by private owners has other dangers, and in this second quarter of the twentieth century most people are coming to recognize that neither system is necessarily to be preferred, but that in relation to each form of enterprise in each locality there must be room for consideration in the light of local circumstances.

Transport, Gas, and Electricity

Every one has come across these undertakings. Trams, omnibuses, and trolley vehicles are commonly managed at the present day by local authorities in boroughs and in urban districts, while one or two county councils also have such undertakings. On the Mersey there are ferry boats owned by some of the town councils, but this is an exceptional arrangement. Transport undertakings cannot be run by local authorities without special parliamentary powers. Gas and electricity, again, are often provided by town and urban district councils, as has been already mentioned, but here again, although the modern tendency is towards this public ownership and management, special powers have to be obtained, and (in such a book as this, designed to give a broad outline of the general functions of local authorities) any full treatment would be out of place. Each enterprise—transport, gas, and electricity—is generally controlled by a separate qualified manager responsible to a separate committee.

Markets

The oldest of the undertakings managed at the present day by local authorities, and in some ways the most interesting and picturesque, is the control of markets. A market seems to have been one of the earliest evidences of human progress. Wherever men were gathered together in a community of any sort, some public place must have been provided for the exchange of commodities. In English history it was early regarded as one of the functions of the lord of the manor, or other chief personage in a village or other local community, to provide a market-place and keep order in it. From the reign of Henry II., at any rate, there is evidence that such markets existed throughout the kingdom on a more or less uniform pattern, the lord of the manor, the abbot of the local monastery, or other leading personage of the locality being under obligation to keep order in the market, and to provide a place where it could be held, and being entitled in return for doing so to receive tolls on goods brought in, and to charge rents to persons who set up stalls or kept booths in the market. The early towns found it worth while to buy, from the owners of these market rights, the privilege of holding the market and taking tolls and rents therein. They may sometimes have done this as a source of revenue ; elsewhere they did it with the idea of excluding strangers from the local trade. In course of years the courts evolved a theory that no market could lawfully be held without a charter from the King, and that the King himself could not lawfully grant a charter to hold a market within seven miles of an existing market, unless it could be shown that the new market, being held on a different day or

dealing in a different class of commodities, would not draw custom from the old. Although Acts of Parliament in the nineteenth century made inroads on this rule, that there should be seven miles between one market and the next, the law is still substantially the same. It is still possible for the King to grant, and he does occasionally grant, new market charters either to private persons or to local authorities. The more normal practice, however, came to be, with the growth of population at the end of the eighteenth and in the early nineteenth century, for persons desirous of establishing markets to promote an Act of Parliament. This would get over any difficulty about proximity to an existing market, and Parliament itself settled the tolls and other charges which might be levied. When it was desired to raise money for the purpose of constructing or improving a proper market-place, it was obviously convenient to have a clear statutory right to make charges from which the interest on the capital could be paid. Markets, although much older than the turnpike roads, railways, and other forms of enterprise which sprang into existence with the growth of wealth and population in the last few generations, have thus a similar history in legislation. Like roads, but unlike railways, markets tended throughout the nineteenth century to pass from the hands of market companies, lords of the manor, and other private owners, into the hands of local authorities. Some of the great London markets are still in private ownership, but outside London there are few important markets which are not owned by local authorities, although it should be mentioned (to prevent misunderstanding) that this statement refers to markets in the legal sense, that is, places for buying and selling which are open as of right

to all the public. In addition to these there are many auction marts, and similar types of private premises, which may popularly bear the name of "market" but in which the public at large have no *locus standi*.

Many of the larger towns have markets controlled by special Acts, and some of these Acts contain elaborate scales of charges fixed by Parliament, which may be levied by the local authority on persons coming there to sell their goods. The general legal position is, however, that any local authority by taking certain formal steps may set up a market if there is not already, within seven miles, a market belonging to some other local authority, company, or private person. Once set up, the new market enjoys the same privileges of protection from further rivals as does an ancient market, and the local authority may take rents and charges from persons occupying space for any purposes of sale. No charge may be made upon persons coming to a market to buy. In addition to rents and stallages, which relate to the occupation of a part of the ground of a market, local authorities may also take tolls on goods coming into the market for sale or exhibition, such tolls, unless directly authorized by Parliament, requiring the approval of the Minister of Health as successor to the Local Government Board. Byelaws may also be made by the local authority for governing the market, such byelaws, like tolls, being subject to the Minister's approval. (See page 178, note 1.)

Slaughterhouses. (See page 178, note 2.)

Mention of markets leads naturally to mention of slaughterhouses. One of the strongest reproaches peri-

odically levelled at the English system of public health and local government, and at Parliament for allowing a serious defect to continue, is that in this country almost alone among European countries the great majority of slaughterhouses are still in private ownership, and many of them suffer from serious defects. The committee which has been already mentioned, which has been making proposals for consolidation and amendment of the law of public health, referred in their Third Interim Report published in December 1937 to this defect, but they felt that an attempt to sweep away the private slaughterhouse, or even seriously to alter the statutory conditions under which it exists, would involve an interference with existing law beyond the committee's terms of reference.

The general position is that old slaughterhouses, existing before a date which is not the same in all districts but depends upon the date at which certain optional provisions in the older Public Health Acts were put in force, are entitled to continue, provided that their life has been without interruption. Private slaughterhouses which came into existence at a more recent date require for the most part to be licensed annually by the local authority. The local authority has, however, except where a special Act has been promoted for the purpose, no power to insist that private slaughterhouses shall cease to exist, or to refuse a licence merely in order to prevent competition with its own slaughterhouses. It follows that although local authorities have power under the Public Health Acts to provide slaughterhouses, they have seldom done so, since they would not be in a position to ensure that such slaughterhouses would be used. In some few towns where public slaughterhouses

exist, these have been combined with the local authority's market, and there are a few cases where a local authority has obtained from Parliament power to close the rival slaughterhouses. This particular form of municipal enterprise is not, however, widespread.

Cemeteries, etc.

Another form of semi-trading enterprise is the provision of cemeteries and burial grounds. This is another matter where the law is obsolete. There are Acts of Parliament going back to very early days, under which grounds called burial grounds may be provided by the councils of boroughs and urban districts and by parish councils, and another class of ground, indistinguishable to the naked eye but called by the different legal name of " cemetery," is provided under other Acts. The chief distinction lies in the fact that all fees chargeable by a local authority in a burial ground require the approval of the Minister of Health, whereas in a cemetery the only fees which require his approval are those for interment in common graves, it being open to the local authority to make what charges it pleases for private graves, for permission to place tombstones, and for other luxuries.

At the present day, when old churchyards attached to parish churches are commonly too full for further burials, the authorities of the Church of England and other religious bodies have largely ceased to provide burial grounds for their adherents, and the provision of burial accommodation has come to be regarded as something to be normally undertaken by local authorities. In approving fees for cemeteries and burial grounds,

as in approving market tolls and charges for slaughter-houses, the Minister acts upon the principle that the charges should not be more than will prevent loss to public funds ; these services are, that is to say, not to be treated by the local authority as a source of revenue to yield a surplus for the reduction of rates.

Allotments

Another form of service performed by local authorities from which some revenue may be derived is the provision of allotments and small-holdings. This was one of the earliest public services to be undertaken, and it was at one time hoped that, without an undue burden on the allotment holders or small-holders, the service could be made to pay its way. It seems, however, to be doubtful whether these expectations have been realized in many places, and the provision of allotments has come to be a disproportionately heavy burden on many small local authorities, who bought land for the purpose and find difficulty in getting tenants, or, at any rate, in securing from the tenants a rental sufficient to cover the capital charges. It is difficult to say what is to be done with a service of this kind, beyond perhaps transferring the ownership of allotments from small local authorities to the county councils, and laying it down that, like municipal housing, the provision of allotments is to be run at a loss as something which is useful to the community at large where the expenses cannot be covered by the rents.

Baths and Wash-houses

Baths and wash-houses have existed for many years as a minor source of revenue, and as a convenience particularly for the poorer classes. In the last ten or fifteen years there has been a great extension of these facilities, particularly in the direction of providing open air baths and swimming pools for summer use.

Until 1925 it was nominally compulsory for local authorities providing swimming baths to insist on the separation of the sexes, although in practice the more enlightened had begun to encourage mixed bathing. Since 1925 separation of the sexes has not been even nominally obligatory, and in open air swimming baths, even those belonging to local authorities, and on certain days in indoor swimming baths, it is now normal for mixed bathing to be allowed.

Local authorities have power, where their district abuts on the sea or on a river or on a lake which can be used for the purpose (although such lakes are rare), both to provide bathing places of their own and to make byelaws regulating bathing places and facilities provided by other persons. Here again, although the separation of the sexes was never obligatory under Act of Parliament as it used to be in indoor swimming baths, many local authorities until comparatively recently insisted on it. An attempt was even made within the last ten years, by the local authority of one famous seaside resort, to re-enact old byelaws which forbade mixed bathing, but the attempt was vetoed by the Minister of Health as confirming authority for the

byelaws. At the present day it may be said that at all seaside bathing resorts mixed bathing is allowed.

Parking Places

Lastly, under the heading of revenue-earning undertakings which are not strictly of a trading character, there may be mentioned parking places. The council of every borough, urban district, and rural district has power to provide parking places for vehicles, either in the streets or on land elsewhere set apart for the purpose. If the parking place is elsewhere than in a street, the local authority may make a charge, but where the parking place is in a street Parliament has consistently refused to allow charges to be made either for use of the parking place or for the services of the local authority's attendants. By the Restriction of Ribbon Development Act, 1935, local authorities were given increased powers in regard to parking places, powers which in fact enable them to provide garages for public use (though the word garage has been avoided), and either to let these out or to manage them themselves.

While their parking places in streets must necessarily involve some outlay, for attendants if these are provided and paid by the local authority, and in any event for the upkeep of the street, parking places on land purchased or appropriated can be made a source of revenue, and it is unfortunate (seeing the extent to which the space available for traffic tends to be reduced by the parking of cars) that local authorities have not made wider use of this power. In many places they have refrained from doing so through the influence of garage proprietors or

the owners of private parking places who have resisted municipal rivalry. But with the daily increase of the number of motor cars in use, and the apparently increasing habit of leaving them parked while their owners go about their business, it seems certain that local authorities in all towns will be driven to make a fuller use of the powers which Parliament conferred on them in 1925.

Note 1 (p. 172). These functions were in 1946 transferred by Order in Council to the Home Secretary from 1st January 1947.

Note 2 (p. 172). During the War all slaughterhouses, public and private, were taken over by the Minister of Food. The small slaughterhouses have for the most part been closed, slaughtering being concentrated at big centres.

PART III

CONCLUSION

READERS will have noticed that English local government has been tending to the formation of larger units, and the transfer of powers to local authorities with larger resources. First, in the sphere of public assistance the traditional unit of local government, the parish, was displaced by the union ; next, in the sphere of public health and highways, by the district. Since the Local Government Act, 1888, and at an increased pace since the Local Government Act, 1929, the county has tended to become the standard area and the county council the dominant authority, except for county boroughs. Even where powers have not been transferred, or units of government abolished (as were unions), the surviving units of government have been amalgamated or extended. Boroughs have absorbed districts (and even smaller boroughs) on their boundaries, and districts of status less than that of boroughs have had their boundaries recast so as to give areas of greater population and resources. Important functions are often confined to the councils of counties and county boroughs, and the surviving smaller authorities carry out many of their duties under the supervision of county councils. While it seems unlikely that in any measurable future the larger units now existing will be merged for general administration,

there is a tendency to form special combinations of counties, or of counties with county boroughs, for certain purposes. The process has brought obvious advantages, but also has its dangers, for the local community and perhaps for the nation as a whole.

The pressure towards larger units springs from the growth of population and the demand for social services. A sparsely populated area, or an area of low rateable value, cannot afford the amenities, and even the necessities, of life as now understood. The local people may be content to go on in the old way, but the national conscience will not let them. Parliament, the central Government, the Press, and the innumerable societies in which England is so rich, demanding compulsory amendment of other people's habits (often to be secured through powers vested in local authorities)—all these are concerned mainly with efficiency, even if it be a mechanical efficiency. They may find it no bad thing that the sphere in which the backward elector could set the pace for a backward authority is becoming narrower from year to year. But as this affects the ordinary man, he finds that the measure of his personal control over the spending of money by local authorities, and the measure of his personal influence in public affairs as a ratepayer or an elector, is reduced. It cannot be said that up to the present time a solution has been found for the problem of combining efficient local government with active public interest. In modern life, the demand for a high standard of sanitation and other preventive measures which are entrusted to local authorities, and the consequent cost of providing skilled officials and large engineering works, involve areas of substantial size. In a town of too large an area and too great a population, the

administrators of its affairs lose touch with their constituents. In the parish, even in the old-fashioned country town, the elected councillors and principal officials were known by sight to every one. It was possible for a householder who had a grievance to secure directly that his grievance was brought before the local authority. It might be that too little activity was shown by the local authority, or it might be that too much money was spent. Councillors in deciding what to do or leave undone, and how large should be the rate they had to levy, were subject to a direct public opinion. Where a local authority numbers sixty or one hundred members, and the population which it governs numbers from a hundred thousand to a million, the direct touch is inevitably lost. The councillors and chief officials can be known to very few, nor can they personally make themselves acquainted with more than a small part of the business which they have to carry on. In a letter to the newspapers in June 1938, Lord Bayford—who, as a former Cabinet Minister as well as a county councillor of many years' experience, knew both sides of the question—strongly pressed this point as an argument against any further widening of governmental areas. This loss of touch is one of the fundamental problems to be considered by those who believe in the English method of local government, and wish to see it made effective. The problem is, indeed, a commonplace of modern government, in the state as well as in the district. (See page 186, note 1.)

Let us for a moment turn to a comparison between central government (in this country or elsewhere) and English local government. In England, at all events, the central Government is in the last resort dependent on the state of feeling in the House of Commons, whose

hostility would prevent it from raising the necessary money to carry out its projects, and whose indifference will, even before this stage is reached, prevent it from giving those projects legislative form. Members of the House of Commons are by numerous and subtle channels susceptible to pressure from their constituents, and the House of Commons cannot continue for more than five years ; in practice it seldom remains so long without a General Election. There is the possibility of a General Election at any time, with all the disturbance and expense, public and private inconvenience, which this means for the elected persons. The Government are therefore in England more or less obliged to keep in touch with public feeling. In France, where in practice the legislature holds office for a fixed term, the direct influence of the electorate between elections is proportionately less ; this is conspicuously so in the United States, where not merely the legislature but also the executive has a fixed term of office.

This last characteristic applies to English local authorities. All local authorities are elected for three years, and no constitutional machinery exists for depriving a member of his seat before that time on the ground that his constituents are displeased with the way he does his work. The worst that can happen to him as an individual is that he may not be re-elected when the time comes—and he may not wish to be so. If those who supported him at the last election are seriously offended by his course of action they may then abstain from voting, or may even vote against other candidates representing the same party or the same group or the same general mode of thought. Speaking broadly, however, it takes much annoyance with, let us say, Conservative

councillors to move Conservative electors to vote "Labour," and *vice versa*. In practice, the worst that happens is that the voter abstains from voting if he is displeased with his own Party. The real link between the electors and the elected thus comes to be, in local affairs as in national affairs, the political machine. Councillors who were elected as representatives of this or that Party will be prevented by Party loyalty from pursuing policies which are likely to lead to a turnover of votes or widespread abstention from voting at the next election. But as local government areas grow bigger, and multiplication of social services and of trading services loads the agenda for their meetings, the sphere in which councillors can vary policy grows less. The public services are carried on by their employees, and the fear of the next election becomes less important except in regard to those few topics on which the local political machines can rouse excitement. Those who believe in "self government," in the sense of Abraham Lincoln's phrase "government of the people by the people for the people," will regret this passing of the personal touch and personal link.

The upshot is that the system of representation which is called "democracy" is, by force of circumstances, becoming a system in which a small number of persons (growing proportionately smaller with the increase of the population) is put in office through the operation of a political machine, and, when in office, exercises functions much the same as those of the directors of a company. It is "government," and it is "local government" within the literal meaning of the words, but it is not local government as this phrase was understood a hundred years ago. But, it may be said, if the local elector is by

the march of events losing control of those whom he elects, is not the national electorate, through Parliament and the central Government, in a stronger position than ever to control them ? The answer is both yes and no. The cost of modern English local government, with its concomitant of Government grants approaching half the cost, and the ease with which local deficiencies can in the Press be made a matter of nation-wide discussion, mean that policy is settled, very largely, upon uniform lines. But the magnitude of the operations concerned, and the difficulty of focusing public attention for more than a few days upon any district, mean also that the local governing authority is left, year by year, a greater freedom in day-to-day administration. The multiplication, since 1919, of Government departments, each created for a separate purpose, and each communicating directly with local authorities, precludes any one department or Minister from exercising control. There is no " Minister of the Interior " in England, nor is there any officer, like the Prefect in France, who represents the central Government in local administration. Partly by deliberate choice, partly by accident, Parliament and governments of all political complexions have been setting local authorities free from control by national organs. While this can in one sense be hailed as local " freedom," it means less and less freedom for the private person. True, the courts are open, and local authorities equally with the private person and the trading company will on cause shown be restrained by the courts from illegality, or from assuming powers which Parliament has not conferred upon them. But there is no court, and no department of the Government or other central organ, to which a person conceiving himself injured by a local

authority can have recourse—unless he can bring his case within some rule of law giving him a right of action (and it is only a very rich or very angry man who will embark on litigation against a local authority with the rates behind it), or within one of the enactments giving a private person a specific right of appeal to a Minister of the Crown.

It is mentioned above that there is another, a national, aspect of this increase in the areas, the resources, and the powers, of local authorities, with the tendency to put county councils in a supervisory position over all authorities except those of county boroughs. It is a commonplace of municipal life to hear complaints against Parliament and the central Government, for depriving local authorities of their initiative, with the inference that somehow the principles of democracy are thereby infringed. It is true that the initiative is passing away from local authorities, through the increase of population and improvement of communications, which mean that the public in one district will not be satisfied without amenities which are enjoyed in other districts. " Government for the people " and " by the people " brings its influence to bear on a national rather than a local scale, especially at the stage of formulating policy. The execution of that policy is however left to local authorities, less and less subject to control or criticism, either from the centre (the Government) or the circumference (the electorate). A large part of the operations of any central Government, in relation to the organs of local government, consists in stimulating these last to come up to some national standard, which the public at large throughout the kingdom thinks should be reached for the benefit of the public of the particular locality, but in

giving effect to these expressions of the national will, or it may be these implications in regard to the national will, the local body can do much as it likes. One problem for the future is, how far will English local authorities perform these tasks as part of a national whole? How far will the independence enjoyed by the immensely powerful local authorities of the present day, independence of control either by their constituents or by any organ standing for the nation, lead towards national disintegration?

Note 1 (p. 181). See particularly *The Borough, Urban, and Rural Councillor*, by Neville Hobson, M.C., J.P. (1947, Shaw and Sons, Ltd., 30s.), a spirited exposition of this point of view.

BIBLIOGRAPHY

In addition to the books and reports mentioned in the footnotes on page 7 and elsewhere, the following books may be consulted. Most of them are expensive, but readers should find some at any rate in the larger public libraries. The prices shown are subject to alteration.

C. Barratt. *Your Local Authority.* 1946. (Pitman. 12s. 6d.)

J. J. Clarke. *Local Government of the United Kingdom.* 1937. (Pitman, 12s. 6d.)

Sir Gwilym Gibbon, C.B., C.B.E. *Expenditure and Revenue of Local Authorities.* 1936. (Royal Statistical Society. 1s. 6d.)

Sir Gwilym Gibbon, C.B., C.B.E. *Problems of Town and Country Planning.* 1937. (Allen and Unwin. 5s.)

Sir Gwilym Gibbon, C.B., C.B.E. *The Public Social Services.* 1937. (Royal Statistical Society. 1s. 6d.)

Hart's Local Government Act, 1933. Edited by Charles Scholefield. 1937. (Butterworth and Co. 25s.)

Sir W. E. and W. O. Hart. *Introduction to the Law of Local Government and Administration.* 1938. (Butterworth and Co. 21s.)

E. L. Hasluck. *Local Government in England.* 1936. (Cambridge University Press. 12s. 6d.)

H. A. Hill. *Complete Law of Housing.* 1938. (Butterworth and Co. 30s.)

H. A. Hill. *Complete Law of Town and Country Planning.* 1937. (Butterworth and Co. 30s.)

W. Ivor Jennings. *Principles of Local Government Law.* 1931. (London University Press. 6s.)

W. Ivor Jennings. *The Law of Public Health*, 1936. 1936. (Charles Knight and Co. 42s. 6d.)

W. Ivor Jennings. *The Law of Housing.* 1936. (Charles Knight and Co. 35s.)

W. Ivor Jennings. *The Law Relating to Local Authorities.* 1934. (Charles Knight and Co. 45s.)

W. Ivor Jennings. *The Law Relating to Town and Country Planning.* 1933. (Charles Knight and Co. Vol. I., 12s. 6d. Vol. II., 7s. 6d.)

Knight's Annotated Model Byelaws. Edited by C. Roland Woods, M.B.E. 1938. (Charles Knight and Co. 35s.)

Knight's Public Health Statutes, 1875–1937. 1937. (Charles Knight and Co. 27s. 6d.)

A. R. Llewellin-Taylour. *Local Government Act*, 1933. 1934. (Hadden, Best and Co. 42s.)

Mackenzie's Rating and Valuation Officers Handbook. Edited by F. J. PHILLIPS. 1932. (Butterworth and Co. 10s. 6d.)

R. C. MAXWELL. *The Parish Councillor's Guide.* 1938. (Shaw and Sons. 5s.)

D. NELIGAN. *Dumsday's Parish Councillor's Handbook.* (Hadden, Best and Co. 30s.)

STEWART SWIFT. *Housing Administration.* 1938. (Butterworth and Co. 25s.)

STEWART SWIFT. *Sanitary Administration.* 1937. (Butterworth and Co. 25s.)

H. TOWNSHEND-ROSE and H. R. PAGE. *The Councillor's Handbook.* 1945. (Pitman. 7s. 6d.)

J. H. WARREN. *English Local Government System.* 1946. (Allen and Unwin. 7s. 6d.)

H. W. WIGHTWICK. *District Councils.* 1935. (Hadden, Best and Co. 15s.)

WRIGHT and HOBHOUSE. *Local Government and Local Finance.* Edited by CECIL OAKES. 1937. (Sweet and Maxwell. 12s. 6d.)

The following weekly periodicals regularly publish articles on local government topics, with notices of new Acts of Parliament, Government Regulations, Legal Decisions, etc.

The Justice of the Peace and Local Government Review. (The oldest and the premier local government journal.) 1s. 4d. weekly; 35s. to annual subscribers.

The Local Government Chronicle. (3d.)

The Public Assistance Journal. (1½d.)

The Municipal Journal and Public Works Engineer. (6d.)

Important articles on local government are often published in *Public Administration*, 4s. quarterly—the journal of the Institute of Public Administration.

The County Councils Association issues a monthly Gazette, price 6d.; and the Urban District Councils Association and Rural District Councils Association issue Monthly Circulars to their members. The Association of Municipal Corporations publishes a monthly newspaper, the *Municipal Review*, price 6d.

The Annual Reports of the Ministry of Health, published by H.M. Stationery Office about midsummer, covering the twelve months ending on 31st March, comprise the fullest and most up-to-date information available, and are essential for the serious student of local government. They will be found in any good public library. The price varies slightly from year to year, but is about 5s.

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